This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

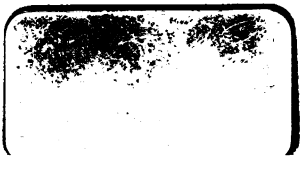
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

527. r. 1



23407 d.9

To Warren Hastings Esqr from A.C. Johnstone

DEFENCE

OF

THE HONOURABLE

ANDREW COCHRANE JOHNSTONE;

INCLUDING A

VIEW OF THE EVIDENCE

PRODUCED ON HIS TRIAL;

WITH THE

Sentence

AND VARIED COMMENTARIES THEREON,

BY THE

JUDGE ADVOCATE GENERAL;

AND WITH A

RELATIVE SERIES OF INTERESTING LETTERS PREVIOUS AND SUBSEQUENT TO THE PROSECUTION:

TO WHICH IS PREFIXED,

A LETTER TO HIS ROYAL HIGHNESS THE DUKE OF YORK,

On the present Administration of Military Law.

TO THIS EDITION IS ADDED,

A CORRESPONDENCE WITH THE DEPARTMENT OF *THE COMMANDER IN CHIEF,*

AND THE

SPEECHES IN THE HOUSES OF LORDS AND COMMONS ON THE RESULT OF THE TRIAL.

EDINBURGH:

Printed by J. Ballantyne & Co.

FOR MANNERS AND MILLER, EDINBURGH;

AND J. BUDD, AT THE CROWN AND MITRE, 100, PALL-MALL, LONDON.

1806.

BODLEIAN
30 9 1914
LIBRARY

BRITISH MUSEUM
Transferred to
DUPLICATE

TO

General the Right Honourable the EARL of HARRINGTON,

General PETER CRAIG,

Lieutenant-General GEORGE HARRIS,

Major-General JOHN WHITELOCK,

Major-General the Hon. EDWARD FINCH,

Major-General the Right Honourable LORD SOUTHAMPTON,

Major-General SIR JOHN STUART,

Major-General the Hon. EDWARD PAGET,

Major-General BRENT SPENCER,

Brigadier-General WILLIAM HOUSTON,

Brigadier-General ANTHONY LEWIS LAYARD,

Brigadier-General FRANCIS CARRUTHERS,

Brigadier-General HENRY MONTRESOR,

Brigadier-General ALBERT GLEDSTANES,

AND

Brigadier-General JAMES HAY,

TO WHOM THIS PUBLIC APPEAL IS MADE FOR THE TRUTH OF THEIR CONTENTS,

THE FOLLOWING PAGES

ARE

RESPECTFULLY INSCRIBED BY

THEIR MOST OBEDIENT

AND MOST HUMBLE SERVANT,

ANDREW COCHRANE JOHNSTONE.

INTRODUCTION.

THE following letters form the continuation of a series published in August last. In that publication, the hardships I had then suffered, my repeated applications to obtain an investigation of my conduct, with the vexatious delays, and multiplied pretexts for protracting that investigation, will be seen in detail. To have transcribed these details into the present collection, would have swelled its size far beyond the prescribed limits*: I must be content, therefore, to refer to them, when necessary, as well as to the trial of Major Gordon, published about the same time; both which are closely connected with the subject of the present publication, and may be considered as previous chapters of the same history.

During the interval which elapsed between the termination of Major Gordon's trial and the commencement of my own, procrastination and delay of justice, howsoever distressing, formed only a part of the mortifications I experienced. Enquiries necessary to enable me to prepare my defence, were obstructed: copies, and even the bare inspection of papers essential for that purpose, were refused; and charges were finally admitted to trial in such *unintelligible* shape as seemed to set the possibility of defence at defiance. A correspondence of no ordinary length, with relation to these matters, took place in the interval alluded to; but which it will be unnecessary to introduce here, because, in spite of the many formidable obstacles I had to encounter, I have had the good fortune

* The publication, alluded to, is added in the present edition: See page xxxi.

to establish my defence to the perfect satisfaction of that High Judicature, which *alone* possessed competent authority to judge, and to decide upon it.

The letters and extracts, contained in the present publication, are selected from the mass in my possession, as being more directly applicable to the chief subject of discussion, which regards a great principle in the public military law of the country.

A circumstance, never to be forgot in the history of the British Army, is this, that in the brevet promotion, October 1st, 1803, the name of an officer, whose seniority as Colonel entitled him to the rank of Major-General, was, without any reason whatever assigned to him, or notified to the public, ordered to be omitted. Thus, one of the severest punishments to which an officer, on legal conviction of a high misdemeanour, is subject, was, without a pretence of guilt, without a minute's warning, without sentence, conviction, defence, trial, or even any known accusation, inflicted upon an innocent man, who had devoted his life and fortune to the service of his King and Country.

Another circumstance, not less remarkable by the event, is the pledge given by the Commander in Chief, in his answer of 10th December, 1803, to my letters and memorial, representing the injustice done me, and requesting to have my conduct investigated. "As you have yourself "exhibited charges against Major Gordon," says His Royal Highness, "I do not now see the possibility of ta-"king any steps respecting the investigation of your con-"duct, *until Major Gordon's trial is disposed of.*

"In regard to your promotion to the rank of Major-"General, I must observe to you, that it is an invariable "rule of the service, not to include in any general bre-"vet promotion, an officer, (whatever may be his rank) "*against whom there exist charges*, the merit of which has "not been decided.—Whenever a investigation shall "have taken place, and *should the result prove favourable to* "*you, there will not be any difficulty in your recovering the* "*rank to which your seniority as Colonel entitles you.*" *

* See Correspondence.

For an explanation of the origin and nature of my charges against Major Gordon, the detail of the evidence, and the sentence, I must refer to the trial. The members of the Court were gentlemen of the highest honour, and, with the single exception of Lieutenant-General Fox, officers of the Life and Foot Guards, whose professional duties and experience did not particularly qualify them for judging of the charges, which related to the form of returns and pay-lists, and other circumstances, totally different from any thing known or practised in the Guards. This may in part account for the unusual construction of the sentence, which, in form of words, *acquits* the prisoner, and, in express terms, finds him, to a certain extent, guilty under every charge. Thus, under the *two first* charges, he is found to have been "*very irregular;*" under the *third*, to have been guilty of "*culpable neglect;*" and under the *fourth*, and last, to have been "*negligent, and to have subjected himself to censure.*"

A copy of Sir Charles Morgan's letter to the Commander in Chief, containing that sentence, with His Majesty's *ratification* of it, was transmitted to me; and I confess it was with extreme surprise, not unmixed with honest indignation, that I read the following notice annexed to it.—"His Majesty," said Sir Charles Morgan, "His Majesty has further directed me to notice, that neither the prosecutor, nor the defendant, has acquired any credit, by the manner in which they have respectively conducted themselves during the trial, each of them industriously pressing extraneous matter upon the court, to the extreme protraction of the proceedings, and each of them, as if urged by a rooted animosity, endeavouring to depreciate the character, and to place every act of the other in the most unfavourable point of view*."

Sir Charles Morgan was not present on any day of the trial; of course, he could know nothing of my *manner* in conducting myself, unless by report from his Deputy, Mr Oldham, who officiated in his place.—But, be the author who may, I venture to affirm, that, as far as the attack is

* See Correspondence.

levelled at myself, few instances, if any, could be produced of a more groundless reproach.

When the Judge Advocate-General went to make his official report, *pro forma*, of Major Gordon's trial, and of some others at the same time, His Majesty had scarcely recovered from a very severe indisposition. The proceedings in Major Gordon's trial alone could not have been read over in three hours. The Judge Advocate was not in the royal presence altogether ten minutes.—The trial was never looked into.—I speak to facts which I know, and will prove. Sir Charles Morgan, as a gentleman, will not contradict what I aver.—His censure was unfounded in fact, suggested by no higher authority than his own deputy.

As from the letter of the Commander in Chief above referred to, it evidently had been arranged, that Major Gordon's trial was to be merely the prelude to my own, there did appear to be an unfeeling harshness as well as a degree of cruelty and oppression, in attempting to fix an injurious stigma upon a person, when on the eve of submitting his whole conduct and character to a judicial investigation and trial by his peers.—Knowing that I was innocent, and feeling that I was injured, I waited on the Right Honourable President of Major Gordon's Court Martial, and requested (if my request was not irregular) to know, whether that Court had given any warrant or sanction for the charge of misconduct with which the Judge Advocate was pleased to reproach me.—To this Lieutenant-General Fox very handsomely answered, that he felt himself perfectly at liberty to assure me, that had the Court Martial *meant*, or seen any just cause to warrant or sanction any thing of the kind, the same would undoubtedly have been expressed in the sentence:—and as no such thing was there expressed, I was free to draw my own conclusions.

While Mr Oldham appeared to have paid so much dutiful attention to such minutiæ as my *manner* in the course of that trial, I could not help thinking it odd, that he seemed to have shut his eyes and ears to repeated instances of *perjury* in an important part of the evidence given *for Major Gordon*, which, though openly marked

and reprobated by different members of the Court at the time, were not, it seems, of sufficient consequence to attract the notice, or of a nature to provoke the censure, of the Deputy Judge Advocate.

In my own humble opinion, which was completely fortified by that of my counsel, it became a matter of essential importanee, that I should not be sent to the bar of my own Court Martial, with a supposed condemnation by a previous Court Martial hanging round my neck. Accordingly, I gave notice that I should summon Lieutenant-General Fox, and some other members of Major Gordon's Court Martial, as witnesses, to prove, in the *first* place, that the censure most improperly inflicted upon me by the Judge Advocate, in the name of His Majesty, was without any authority, warrant, or suggestion whatever from the Court; and, 2dly, that, in point of *fact*, my conduct throughout Major Gordon's trial was, in all respects, the *reverse* of what the Judge Advocate presumed to represent. I resolved likewise to summon Mr Oldham himself, in order to put him upon his oath with relation to the same points. And I was farther determined, in case of his being appointed to officiate at my trial, to enter my challenge against him in form, as a principal, at least a party, in the injury and injustice done me; and, on supposition of my objection being over-ruled by the Court Martial, to apply to a superior tribunal for a prohibition.

Matters were in this situation, when I received the following letter:

From the Right Hon. Lieutenant-General Fox,
To Colonel Cochrane Johnstone.

Harley Street, Sept. 15, 1804.

SIR,

Having an opportunity of proceeding to Gibraltar in a king's ship, and besides conceiving it the indispensable duty of every officer to repair to his post in time of war with the utmost expedition, my being detained in this country any longer would be attended with the most serious inconvenience to myself.

I am therefore to hope my presence at the General

Court Martial, which is to be assembled, may be dispensed with; particularly, as it appears to me, that I can give no information, but what may be obtained from *the Deputy Judge Advocate,* or any other member of the late Court Martial upon Major Gordon; and if you can dispense with my attendance, I shall esteem myself most particularly obliged to you.

I have the honour to be, &c.
Signed W. H. Fox.

From the Hon. Col. Cochrane Johnstone,
To the Right Hon. Lieutenant General Fox.

Harley-Street, 20th Sep. 1804.

SIR,

I had the honour of receiving your letter of the 15th instant, which I would have taken an earlier opportunity of acknowledging, but I deferred doing it until I could consult with my friends, if any mode could be adopted of enabling me to have the benefit of your evidence for my Court Martial, without subjecting you to the inconvenience of remaining in this country.

I am sorry, on your account, to say, that it does not appear any examination can take place previous to the assembling of the Court Martial, and that no letter from you could be received as legal evidence.

I regret extremely that this delay will be attended with inconvenience to you, but as I received this day a letter from Lieutenant-Colonel Gordon, Secretary to the Commander in Chief, informing me, that the order for Sir Thomas Trigge's return to this country was forwarded a considerable time ago, I am hopeful that this delay will not be of long duration.

I have the honour to remain,
With the greatest respect, &c. &c.
(Signed) A. C. JOHNSTONE.

In the mean time I was amused, day after day, with reports of General Trigge being hourly expected, and even of his actual arrival. But these expectations were uniform-

ly disappointed; and while, on one hand, I was worn out by the prolonged suspense and delay of my trial, I was, on the other hand, pressed by many of my most essential witnesses to permit their departure to the several destinations to which their public duty called them; and whose claims, founded upon the existing national crisis, it was extremely painful to a brother officer to resist. The pre-eminent claim of that description was stated in the following letter:

From the Right Hon. Lieut. General Fox,
To the Hon. Colonel C. Johnstone.

Ibbetson's Hotel, Vere-Street, 3d Oct. 1804.

Sir,

Having observed in your letter to Mr Oldham, Deputy Judge Advocate General, of the 25th ult. (a copy of which you had the goodness to transmit to me) that you state the absolute necessity of detaining me from Gibraltar as an evidence upon your Court Martial, I must take the liberty of requesting, and I cannot help feeling myself fully warranted in begging you will have the goodness to inform me, upon what points you mean to interrogate me upon that occasion.

I have the honour to be, &c.
(Signed) W. H. Fox.

From the Hon. Colonel C. Johnstone,
To the Right Hon. Lieut. General Fox.

Harley-Street, 5th October, 1804.

Sir,

I have had the honour of receiving your letter of the 3d instant, and should have no objection to communicate, in confidence to you, every point and circumstance of my defence. But, I presume, the information I should give would necessarily be the subject of consideration and discussion (extremely difficult to keep private) in order to judge how far the grounds I

state are sufficiently strong to warrant my claim for your attendance at my trial. Owing very probably to that cause, I have found it impossible to convey information of the nature you do me the honour to ask, in such a manner as to prevent the substance of it from transpiring, and even reaching my accuser, thereby arming him with a considerable, and scarcely fair advantage against me.

Standing in the delicate situation with which you are acquainted, I trust, Sir, you will therefore have the goodness to accept of my apology for adhering, in the present instance, to the general and invariable line of conduct which I had prescribed to myself previous to receiving your letter.

Let me, however, entreat you, Sir, to do me the justice to believe, that I am incapable of desiring or permitting my individual interest to stand in opposition to that of my country. I beg leave to assure you, that no man could feel more pain than I should from the reflection, that an officer of high rank and distinction was withheld, on my account, a single day from his post in time of war. I should indeed have strangely forgot myself, did I not know too well how to appreciate the great military talents and resplendent merit of Lieutenant General Fox, not to be sensible, that any suspension of his professional employment, at the present crisis, can be considered in no other light than that of a national calamity.

Deeply impressed by these considerations, and truly zealous for the public welfare, I yesterday wrote to the Adjutant General, for the information of the Commander in Chief, that I left the matter in question, with implicit deference, to be disposed of as His Royal Highness shall think fit. If you suppose it can in any degree answer the ultimate purpose of your letter, and still more fully clear the case from embarrassment, I have no hesitation in now declaring, that be the consequences to myself personally what they may, I hereby acquit you of all obligation to attend as a witness in my behalf, and wave my right to detain you longer in this country.

I have the honour to be,
With the greatest respect,
&c. &c. &c.
(Signed) A. C. JOHNSTONE.

(Note.)

From Sir Charles Morgan,
To Colonel Cochrane Johnstone.

Judge Advocate General's Office; 31*st Jan.* 1805.

SIR,

I have now the honour to acquaint you, that the General Court Martial for your trial is appointed to be held at Canterbury, on Friday, the 1st day of March next.

(Signed) C. M.

From the Hon. Col. Cochrane Johnstone,
To the Right Hon. Sir Charles Morgan, Judge Advocate General.

67, *Harley-Street,* 9*th February,* 1805.

SIR,

As Friday, the 1st of March next, is fixed for the assembling of the General Court Martial on my trial, I have to request that you will be pleased to furnish me with a copy of the prosecutor's list of witnesses, in order to my considering any objections to their inadmissibility, and to enable me to meet their testimonies, if necessary, with contrary evidence.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

From Sir Charles Morgan,
To the Hon. Colonel Cochrane Johnstone.

Downing-Street, 9*th February,* 1805.

SIR,

I have just now received your letter of this morning's date, requesting that I would furnish you with a copy of the prosecutor's list of witnesses. The request is unusual; and I do not know that I have a right

to make the communication desired—not that I have any reason to suppose the prosecutor wishes the contrary—I presume, he has only made application to me respecting such witnesses for whom he thinks an *official summons necessary*—he will doubtless be at liberty to produce others at the trial.

I have the honour to be, &c.
(Signed) CHARLES MORGAN.

From Colonel Cochrane Johnstone,
To Sir Charles Morgan.

67, *Harley-Street,* 11*th Feb.* 1805.

SIR,

As I intend leaving town for Canterbury in a few days, I have to request that you will do me the favour to inform me of the name of the person nominated by you to act as Judge Advocate at my trial.

I have the honour to be, Sir, &c.
(Signed) A. COCHRANE JOHNSTONE.

From Colonel Cochrane Johnstone,
To Sir Charles Morgan.

Harley-Street, 11*th Feb.* 1805.

SIR,

Nothing could be more remote from my intention, than to trouble you with any application that either was unusual, or such as you had not a right to comply with. Perhaps my request was expressed in too broad or general terms, as I observe you distinguish, with much apparent propriety, between those witnesses whom the prosecutor may have occasion to serve with *an official* summons, and those on whose attendance he may rely without resorting to that compulsitor. As it is the former class only of which you can strictly be said to have any *official knowledge*, and of whom you may consider yourself as having a right to furnish me with the list, I readily acquiesce in the restriction of my application to these; and

I flatter myself that you will feel yourself at liberty to grant my request as thus restricted.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

From the Right Hon. Sir Charles Morgan, Bart. Judge Advocate General, To the Hon. Colonel Cochrane Johnstone.

Downing-Street, 12th Feb. 1805.

SIR,

I did not receive your letter of yesterday's date until late at night. I meant to convey to you in my last letter, written in haste, because I would not detain your servant, who waited for an answer, that I much doubted whether I had a right to communicate either to a prosecutor or a defendant, a list of the witnesses, for whose attendance application had been made by the opposite party. The remark, which I added, that the prosecutor would be at liberty to produce at the trial other witnesses than those for whom he had obtained an official summons, was calculated to assign a reason, which led to that doubt, as that circumstance implied, that there existed no claim of right in either party, to know beforehand, who were the witnesses intended to be produced by the other at the trial. I am utterly ignorant, nor have I any means of knowing, whether Major Gordon has it in contemplation to call upon any persons besides those for whom he has made application to me, in order to their being summoned, and I could not therefore have in view such distinction as your letter seems to suppose.

In answer to your other letter of yesterday's date, I have to acquaint you, that when it shall be ascertained who will officiate as Judge Advocate at your trial, you shall be informed thereof.

I have the honour to be, &c.

(Signed) CHARLES MORGAN.

From the Hon. Colonel Cochrane Johnstone,
To the Right Hon. Sir Charles Morgan,
Judge Advocate General.

67, *Harley-Street*, 14*th Feb.* 1805.

SIR,

I have received your letter of the 12th inst. containing a general and distinct negative to my request of a copy of my accuser's witnesses; and I beg leave to explain the grounds on which I conceived my application to be justified, in order to prevent any impression upon your mind, that I could mean to give unnecessary trouble.

In the course of a late correspondence with the Commander in Chief, I had the honour of being informed by His Royal Highness, that I was entitled to challenge or decline any officer appointed a member of my Court Martial, in the manner prescribed by law. I was likewise assured by my brother officers, and others conversant with such matters, that I had a right to state whatever objections occurred to my accuser's witnesses, whether in respect of their admissibility, their credibility, or otherwise. In order to enable me to discover such objections, it was necessary first of all, that I should know who the members of the Court, and who the witnesses actually were; and I was sensible, that unless I had a right to such previous information, my supposed rights of challenge were altogether nugatory. Accordingly, I learnt, upon inquiry, that this matter had been decided by a highly-respectable writer, and the chief authority extant on martial law. I allude to the accurate and very judicious treatise lately published by Alexander Fraser Tytler, Esq. who for many years filled the situation of Judge Advocate for Scotland with great reputation, and whose merit has since advanced him to the dignity of a Senator of the Supreme Civil Court of his country, with the title of Lord Woodhouselee, p. 248. That Honourable and Learned Judge lays it down as a received and established rule, in the regular course of procedure, that a prisoner is to be furnished with a list of the witnesses previously to his trial, for the essential purpose before mentioned. The prosecutor pro-

ceeds to adduce his evidence; says he, "*a list of the wit-* "*nesses having been furnished to the prisoner previously to* "*the trial,* that he may be *aware, and have full time to de-* "*liberate on any objection* that may lie against their admis- "sibility, or prepare to encounter their testimony by con- "trary evidence." The extreme good sense conspicuous in this passage, seems to afford pretty strong presumptive evidence of its conformity with law.

On the same subject, his Lordship is still more pointed and satisfactory in his subsequent chapter, entituled, "Of "the office and *duties* of a Judge Advocate." Being here in his personal department, his Lordship may be considered as giving an account of the uniform practice of the Court, as falling within his immediate knowledge and experience. In detailing "the *official functions* of the Judge "Advocate in the trial before a General Court Martial," he is careful to mention a circumstance of great importance to the party, namely, the *time when* that officer's duty requires him to furnish the list in question. He lays it down, that when a Court Martial is summoned, the Judge Advocate, after being himself furnished with the articles of accusation, and informed of the circumstances of the case, ought "to give (p. 366.) the *earliest intimation* "*to the prisoner* of the time and place appointed for his "trial, and furnish him, *at the same time,* with a *true copy* "*of the charges that are to be exhibited against him, with the* "*names and designations of the witnesses by which they are to* "*be proved or supported;* and, *likewise, a correct detail of* "*the members of the Court Martial.*" The subsequent part of the section is distinguished by similar candour and precision.

Thus it appears, that as far back as the date on which I was served with a copy of the charges preferred by Major Gordon, I was entitled to have received a copy of his list of witnesses, as well as of the members composing my Court Martial. I therefore believed, that in applying for the former of these lists alone, I merely asked your compliance with part of your official duty, by giving me a *part* of my legal rights.

That I was conscious of making no application that could be considered as in any degree unusual or irregular,

I flatter myself you will readily allow, when I take the liberty of assuring you, that I truly believed the treatise referred to was communicated to you previous to its publication, and was ushered into the world under your express sanction. I was naturally led to entertain that persuasion, from observing the following passage in the preface of the honourable and learned author: "In any matters regarding the practice of the military courts which appeared to the author doubtful, he availed himself of the knowledge of those who were best qualified to resolve his doubts: and it would be a failure in justice, as well as in gratitude, not to acknowledge the useful information which has been readily and politely furnished him by Sir Charles Morgan, Judge Advocate General, on all points on which he had occasion to consult him."

I have the honour to be, &c.

(Signed) A. Cochrane Johnstone.

From the Right Hon. Sir Charles Morgan, Judge Advocate General, To the Hon. Colonel Cochrane Johnstone.

Downing-Street, 15th Feb. 1805.

Sir,

I have to acknowledge a letter from you of yesterday's date, which I received in the evening, at my return from the House of Commons. I trust, that there will not be found in my letters to you any expression or insinuation, which called for the formal disclaimer contained in your first paragraph, of your being disposed to give unnecessary trouble, or of having made application for any thing to which you did not conceive yourself to be entitled.

In answer to the observations and arguments in the subsequent parts of your letter, I must be permitted to say, that I have in your case pursued the line of conduct which I have invariably held during a long course of years, without any blame being imputed to me in respect thereof; and in which, unless I shall be convinced of its being er-

roneous, I must persevere, whilst I retain the office of Judge Advocate General; at the same time, I cannot but feel concern, that you should have imbibed a notion of my having withheld, or of my being inclined to withhold, any communication which appeared to me proper, or even of my being capable of departing so far from my official duty, as to decline giving you *any part* of your legal rights.

I desire to be understood, as entertaining a due esteem of Mr Tytler's respectable character and abilities, and of the laudable pains he has taken in the treatise to which you refer, and think myself honoured by the mention he has made of me in the paragraph which you quote; but you are altogether mistaken in the inference you have drawn therefrom, of the treatise having been communicated to me previous to its publication, and of its having received, what you are pleased to term, my express sanction. There certainly are some few points upon which, if I had seen it, I should have presumed, with proper deference, to intimate to the author a difference of opinion.

I now send, agreeable to your desire, a list of the officers of whom it is proposed that the court martial for your trial shall be constituted, and have the honour to be, &c.

(Signed) CHARLES MORGAN.

P.S. Agreeably to your request, contained in your other letter of the same date, I now send you letters of summons, addressed to Lieutenant Colonel Hamilton and Lieutenant Colonel Brown, whom you therein represent as witnesses necessary for your defence; *and am now enabled to acquaint you, that Mr Oldham,* Deputy Judge Advocate General, will officiate at your trial.

From Colonel Cochrane Johnstone,
To the Right Hon. Sir Charles Morgan, Bart.

67, *Harley Street,* 16*th Feb.* 1805.

SIR,

Having been particularly engaged through the whole of this day, I had it not in my power to acknowledge sooner the receipt of your polite and obliging letter

of yesterday's date. I beg you may be assured, that I never did you the injustice of entertaining an idea so inconsistent as I am convinced it is with your own sense of your official duty, that you withheld from me what you considered to be my undoubted legal right. In what I wrote to you, I had no other intention than to state explicitly the reasons of my application to you, and to remove any impression which it seemed to have produced of an injurious tendency.

Permit me to add, that from the circumstances I took the liberty of stating, and from others which will occur to yourself, I cannot help thinking, that if a person in my situation in this part of the united kingdom, *has not* the same right, which he indisputably would have on the other side of the Tweed, you will agree with me in opinion, that he certainly *ought to have* such right. And I therefore would submit, with great deference, to you as a member of the legislature, whether it would not be a measure of substantial justice to move a clause to be inserted in the Mutiny Bill now pending in Parliament, for the purpose of supplying the defect alluded to.

Upon the subject of the postscript to your letter, I have to thank you for your attention with regard to the letters of summons, and also for acquainting me with the appointment of Mr Oldham to officiate as Deputy Judge Advocate General at my trial. At the same time, I regret the necessity of representing to you, that on *Wednesday* last I communicated to Mr Oldham my intention to summon him as a witness necessary for my defence; and, upon his expressing a wish, that I would come to a resolution on that matter speedily, I acquainted him, that I would, without delay, consult my counsel and decide.

Accordingly, I immediately wrote to Mr Adam, who appointed one o'clock this day for the consultation; and, by whose advice, I have now to request, that you will issue your summons for citing Mr Oldham, as a witness on my trial.

I was given to understand several weeks ago, that the Deputy Judge Advocate for the Canterbury district would probably officiate at my trial.

In your letter of the 12th instant, in answer to mine of

the preceding day, requesting to be informed of the name of the person who was to act in that capacity, you acquainted me, " that when it shall be ascertained who will " officiate at your trial, you shall be informed thereof." And in my conversation with Mr Oldham already mentioned, which took place in your office, on the 13th, when he delivered to me your letter of the 12th, nothing dropt from him tending to make me suppose that he was meant to officiate at my trial; nor, until I received your letter of the 15th, did I entertain any idea of there being an intention to nominate that gentleman.

I willingly declare my belief, that had you been apprised of my intention to adduce Mr Oldham as a witness, you would have felt the propriety of appointing another person to the situation of Judge Advocate. And I have thought it necessary to be thus explicit, in order that you may be satisfied that I have taken the earliest opportunity in my power, after advising with my counsel, of communicating to you the result of the consultation; while you will be sensible, that I had no reason to imagine, that the appointment of Mr Oldham would take place *in the interval between my informing that gentleman of my purpose to cite him as a witness, and the advice of my counsel, to carry that purpose into execution.*

For these, and for other reasons which I am ready to assign, if necessary, I am under the necessity of requesting, that Mr Oldham may not be the person to discharge the duty of Judge Advocate at my trial.

I have the honour to be, &c.

A. COCHRANE JOHNSTONE.

From the Right Hon. Sir Charles Morgan, Bart.
Judge Advocate General,
To the Hon. Colonel Cochrane Johnstone.

Downing Street, 18th February, 1805.

SIR,

In answer to your letter received yesterday evening, I am desirous of stating, that, in respect of the importance of the subject referred to the Court Martial

appointed for your trial, I should have thought it my duty to give my personal attendance, but the gout having possession of my right hand, which renders it not only tedious, but difficult, to take a note, and puts it absolutely out of my power to minute the substance of the whole of the evidence (which I have been accustomed to do) with my own hand, and my having, moreover, for some weeks past, been very far from well, I was obliged to lay aside all thought of officiating myself. That which next naturally presented itself to my mind, was directing the Deputy Judge Advocate General (Mr Oldham) to take that duty, to whom I had not any reason to suppose either party could have any objection, and who, I was confident, would be acceptable, and might, perhaps, if any doubt should occur in the course of the proceeding, be assisting to the Court Martial. But as, from the multiplicity of business now pressing in the office, I could very ill spare him, *I hesitated to appoint him, trusting that the duty might be satisfactorily performed by some other person.* Recently, however, I received an application from his Royal Highness the Commander in Chief, requesting, that the Deputy Judge Advocate General, upon account of his experience, might officiate at the trial, if I could not undertake the duty myself. *This determined me,* and I then gave you an intimation of Mr Oldham's being directed to attend.

It was not possible for me to expect, that he could be a material witness, as not being able, any more than myself, to speak to any of the facts in question from his own knowledge. *When I shall have determined who shall officiate,* you shall be made acquainted therewith.

I have the honour to be, &c.

(Signed) CHARLES MORGAN.

From the Right Hon. Sir Charles Morgan, Bart.
Judge Advocate General,
To the Hon. Colonel Cochrane Johnstone.

Downing-Street, 20th Feb. 1805.

SIR,

In consequence of a letter received from the Deputy Adjutant General, of which the enclosed is an extract; I esteem it my duty, and take the earliest possible opportunity to acquaint you, that the General Court Martial, which was proposed to have been held at Canterbury, on Friday, the 1st of March, for your trial, is now appointed to be holden at the Royal Hospital, at Chelsea, on that day, at ten o'clock in the forenoon.

You will be pleased to communicate the change of place, to the several witnesses to whom you have already transmitted letters of summons.

I have the honour to be, &c.
(Signed) CHARLES MORGAN.

From the Right Hon. Sir Charles Morgan, Bart.
Judge Advocate General,
To the Hon. Colonel Cochrane Johnstone.

Downing-Street, Feb. 20, 1805.

SIR,

Your letter of the 16th instant, wherein you make known to me your intention of calling upon Mr Oldham as a witness, and moreover deprecate his officiating as Judge Advocate at your trial, has distressed me much, more especially as I do not feel myself equal to executing the duty myself. I have turned the matter in my thoughts again and again, and as Mr Oldham is not aware that he can give any material testimony, and as it seems evident, that he cannot have any personal knowledge with respect to any of the facts in question, I cannot think, your having it in contemplation to ask some question (of the propriety of which the Court Martial must judge) is a

sufficient reason for precluding him from officiating at the trial. If I read your letter rightly, it contains a suggestion, that you have other reasons for objecting to his exercising this duty. If you have any other causes, I must entreat that you will state them, that I may consider thereof; seeing, as I have already expressed, the aforementioned reason alone does not appear to me sufficient for my not employing him upon this occasion; and as the business now rather presses in point of time, I shall anxiously await your answer.

I have the honour to be, &c.
(Signed) CHARLES MORGAN.

From the Hon. Colonel Cochrane Johnstone,
To the Right Hon. Sir Charles Morgan, Bart.
Judge Advocate General.

Canterbury, 21st Feb. 1805.

SIR,

I have just received your two letters, both dated the 20th instant; one enclosing an extract of a letter to you, from the Deputy Adjutant General, by which I am sorry to observe, that, instead of Canterbury, where I now am, (and where I, as well as several members of the Court, and many of the witnesses had engaged lodgings) it is now determined, that Chelsea is to be the place where the General Court Martial will assemble for my trial.

The inconvenience and expence which will be occasioned by this sudden change, as well as the impossibility of transmitting timely notice of it to the witnesses,* particularly those resident in distant parts of the United Kingdom, are circumstances to be lamented; and, should the consequence be to deprive me of any material evidence, it will be matter of consideration, upon whom the responsibility ought to attach.

* Several of the witnesses summoned from a distance, actually drove through London to Canterbury, where they had taken lodgings, and were obliged, after clearing these, to post immediately back to Chelsea, at an oppressive accumulation of expence.

With respect to the appointment of Mr Oldham to officiate at my trial, I communicated to you the plain matter of fact, which was, that, after consulting with my counsel, a gentleman of the highest respectability in point of personal as well as of professional character, I did, and do consider Mr Oldham to be an essential witness for my defence. On that account, I made my request, that you would be pleased to summon him as a witness; which request I now repeat.

I certainly mentioned that I had other reasons for considering Mr Oldham to be an unfit person to officiate as Judge Advocate at my trial, and these I shall take an early opportunity of stating to you on my return to town.

Having been afflicted with a severe cough, which is still little abated, I find it necessary, in compliance with medical advice, to take the benefit of country residence for a few days, so that it will be the beginning of next week, before I can have it in my power to call upon you.

I beg to assure you, that it will be extremely disagreeable to me, to state a formal challenge, at the General Court Martial; and I flattered myself, from your letter of the 18th instant, that I should be relieved from that painful task.

I confess, I was rather inclined to imagine, that Mr Oldham himself, after what has passed, would have felt it as indelicate to court the office on the present occasion; and as I have no doubt, there are other gentlemen in whom you can confide, and who may easily be procured, to officiate in his room, I should hope that you will still be satisfied of the propriety of making such an arrangement, as may prevent any of the unpleasant circumstances which his appointment would render unavoidable.

I have the honour to be, &c.

(Signed) A. Cochrane Johnstone.

From the Right Hon. Sir Charles Morgan, Bart.
Judge Advocate General,
To the Hon. Colonel Cochrane Johnstone.

Downing-Street, 22d *Feb.* 1805.

SIR,

I am honoured with your letter of yesterday's date, in answer to mine of the 20th instant, relative to Mr Oldham; your perseverance in deprecating his officiating at your trial, and without stating the more particular objections, which make an impression upon your mind, has really distressed me not a little. I must beg leave to explain to you, that he was not fixed upon for this particular duty, *as the Deputy Judge Advocate General;* he would, in case of my absence, (by whatever cause occasioned) of course have executed this duty under his general appointment; he neither wanted, nor would have had any special instrument to authorize his acting upon this, or any other occasion: and I certainly am not aware, that he is desirous of acting, or, according to the expression in your letter, that he courts the office upon the present occasion. It would be attended with considerable trouble; and, without any additional emolument, he would receive his permanent pay (as he will, if he is not employed) and nothing more.

I am sorry to learn, that indisposition is the cause of your remaining some days in the country; but if you was in town, I should certainly prefer, whilst these matters are pending, to be honoured with any observation from you *in writing,* rather than *to have a personal conference:* I have not seen Major Gordon, and when he was desirous of calling upon me, I excused myself. I certainly shall not lose sight of your representation upon this subject, but have not yet been able completely to make up my mind upon it.

I am, Sir, &c.

(Signed) CHARLES MORGAN.

From the Right Hon. Sir Charles Morgan, Bart.
Judge Advocate General,
To the Hon. Colonel Cochrane Johnstone.

Downing-Street, 25th Feb. 1805.

SIR,

I have now to acquaint you, that in compliance with your representation, I have applied to a respectable barrister to officiate, as Judge Advocate, at your trial, and have, as you desired, cited Mr Oldham as a witness; and have the honour to be,

Sir, &c.

(Signed) CHARLES MORGAN.

From the Right Hon. Sir Charles Morgan, Bart.
Judge Advocate General,
To the Hon. Colonel Cochrane Johnstone.

Downing-Street, 27th Feb. 1805.

Sir Charles Morgan has now the honour to acquaint Colonel Cochrane Johnstone, that he has deputed Mr Daniel (a Barrister) of Lincoln's Inn, to officiate as Judge Advocate, at the General Court Martial, appointed to be held at the Royal Hospital at Chelsea, on Friday next.

From the Right Hon. Sir Charles Morgan, Bart.
Judge Advocate General,
To the Hon. Colonel Cochrane Johnstone.

Downing Street, 27th Feb. 1805.

SIR,

Giving credit to your general statement, that you had material objections to Mr. Oldham's officiating as Judge Advocate at your trial, apart from the circumstance of your intending to call upon him as a witness, and not having since heard from you upon the subject,

which I attributed to your being perhaps upon the road from Canterbury, I engaged another gentleman for that duty; but took it for granted that, before this time, you would have been pleased to communicate to me the nature of those objections, for satisfying my own mind, and also in justice to Mr Oldham, whose not being employed in the regular course of his duty may otherwise seem extraordinary.

I have the honour to be, &c.
(Signed) CHARLES MORGAN.

From the Hon. Colonel Cochrane Johnstone,
To the Right Hon. Sir Charles Morgan, Bart.
Judge Advocate General.

67, *Harley-Street, 27th Feb.* 1805.

SIR,

I have now the honour to acknowledge the receipt of your letter of the 22nd instant, received by me at Canterbury, and of your several letters of the 25th and 27th, acquainting me in particular, that you have deputed Mr Daniel, a Barrister of Lincoln's Inn, to officiate, as Judge Advocate, at the General Court Martial, appointed to be held at the Royal Hospital at Chelsea, on Friday next.

Though unacquainted with the person or character of that gentleman, I can have no doubt that any member of the honourable society to which he belongs, will acquit himself of his duty, in a manner becoming the situation in which you have placed him.

I have to regret in some degree your not having mentioned the gentleman's name in your letter of the 25th, acquainting me with his appointment, as, by doing so, you might have afforded an opportunity of following up the salutary regulations approved and observed in the practice of Judge Advocate.

Lord Woodhouselee, in his excellent chapter "Of the "office and duties of a Judge Advocate," expresses himself in these words, p. 367, "It seems *in no case* to be im-"proper, and may often tend to material justice, as well

" as to the shortening of judicial proceedings, that the " Judge Advocate, on whom lies the conduct of *the evi-* " *dence for the prosecution,* and the discretionary power of " examining such witnesses only as he may deem neces- " sary, should previously be acquainted with the general " nature and scope of *the prisoner's defences;* and for that " purpose, that he should either *converse with himself,* or " with his counsel, *before* proceeding to trial. It has some- " times happened, that by a timely explanation in such " previous conference, circumstances of the charge, *appa-* " *rently the most unfavourable,* have been alleviated, or done " away; and even the *necessity of a trial* altogether super- " seded by the anticipation, which *such a conference af-* " *forded, of a judgment of acquittal* from the chief matters " of accusation."

In consequence of your letter of the 25th instant, informing me of your having cited Mr Oldham as a witness, and that a respectable barrister, to whom you applied, was to officiate as Judge Advocate at my trial, I considered that subject to be finally laid at rest; and therefore I confess, that it struck me as somewhat singular, that, along with your note of this date, all in your hand-writing, I received a letter, with your signature annexed, which seems to breathe, in some degree, a different spirit.

I know that I have no occasion to do more than to refer you to my letter of the 16th instant, and to my letter from Canterbury of the 21st, where my objection to Mr Oldham's officiating is distinctly explained; and where, in case that objection was not considered by you as of itself perfectly relevant, I was ready to state other objections verbally to yourself.

In your answer of the 22d, you decline the personal interview I had suggested, and propose, instead of it, a communication by writing.

Upon this, I have simply to mention what I know will meet with due attention from you; that considerations of a delicate nature weighed in the mind of my counsel, as well as of myself, for preferring a verbal communication of the reasons alluded to, if at all necessary, to a representation in writing. And I am free to say, that averse as I am to press unpleasant matters, without necessary

cause, I willingly gave you the credit to which I considered you to be entitled, for relieving me from a task which I should have felt very disagreeable to perform.

I trust you will accept of the above explanation as an apology for my not having waited upon you since my recent arrival from Canterbury.

I shall be most happy to come to a right understanding with you upon every point of the business in your own presence, which, with great deference, I conceive to be the best and shortest way to clear up whatever may be in doubt.

I am not accustomed to writing, and therefore cannot pretend either to be so correct in my own written communications, or to judge so truly of the sense of the writings of others, as I perhaps can judge of their sense in a personal conference; and thus I confess I hesitated to make up my mind fully upon some passages of our late correspondence.

In your letter to me of the 18*th instant*, you mention your having received an application from His Royal Highness the Commander in Chief, requesting that the Deputy Judge Advocate General, upon account of his experience, might officiate at the trial, if you could not undertake the duty yourself; this *determined you*, and you then gave me an intimation of Mr Oldham's being directed to attend.

In your subsequent letter of the 22d instant, you say, "I must beg leave to explain to you, that he (the Deputy "Judge Advocate General) was *not* fixed upon for this "particular duty."

I have the honour to be, &c. &c.

(Signed) A. COCHRANE JOHNSTONE.

From the Right Hon. Sir Charles Morgan, Bart.
Judge Advocate General,
To the Hon. Colonel Cochrane Johnstone.

Downing Street, 28th February, 1805.

SIR,

Unwilling to break in upon your time, at present probably much engaged, I will only, in reply to your letter this morning received, advert to one or two remarks therein contained; the one, that a letter which I considered merely as a communication of civility, and which consisted of two or three lines, was in my own handwriting, and another letter, of the same day's date, only signed by me; I think I had before fully accounted for such a circumstance, namely, the difficulty with which I guide my pen, whilst the gout has possession of my right hand; another remark respects the quotation, made from the printed treatise of Mr Tytler, (now Lord Woodhouselee) upon which, without meaning in the slightest degree any disrespect to that learned gentleman, I must say, that I do not know that this publication ought to regulate my conduct in any point, wherein long experience, as well as my own decided opinion, leads me to differ from him.

I have only to add, that with respect to the reasons which you consider to operate against the propriety of Mr Oldham's officiating as Judge Advocate, it was, and is, natural that I should desire to know them; and I think you will readily admit, it is natural for Mr Oldham to wish to be informed of them; and I have had the less hesitation in asking them, as I had understood from your first letter upon this subject, you had not any objection to assign them.

I have the honour to be, &c.
(Signed) CHARLES MORGAN.

From the Hon. Colonel Cochrane Johnstone,
To the Rt. Hon. Sir Charles Morgan. Bart. Judge Advocate General.

Chelsea Hospital, 28th February, 1805.

SIR,

Though much engaged, as you truly suppose, I wish to lose no time in acknowledging the favour of your letter of this day's date, just now received.

I flatter myself that you will accept, as a satisfactory answer from me to the first part of your letter, that I have in every instance remarked your correspondence with me to have been distinguished by civility and politeness.

With regard to the wish I had expressed, to forward, in my humble opinion, the great purposes of justice, I observe that your opinion and practice by no means accord with those of His Majesty's late Judge Advocate for Scotland. Upon this I have nothing to state, but my acquiescence in your decision, and my heartfelt regret, that there appears to be no authoritative institute of military law in this part of the united kingdom. I should be happy to find myself in the wrong; but from what I have heard, and more particularly from your very obliging communications, it should seem that the whole essential regulations for the government of Courts Martial are either drawn from the breast of the officiating Judge Advocate for the time, or left to the disposal of the fluctuating judgments of every set of members who may happen to compose a particular Court Martial.

With regard to Mr Oldham, I stated, as, in my humble opinion, a relevant objection to his officiating, that *I had given notice* of my intention to cite him as a witness *previous to his nomination.* This, being *sufficient,* rendered any other objections unnecessary; at the same time, I informed you that I was ready to assign others, if required.

I surely can have no occasion to represent to you the unpleasant situation in which the necessity of stating personal objections, must place every man of ordinary feeling and reflection. Nothing can be farther from my wish than to wound the feelings of any man; at the same time,

I was, and am ready, to assign other reasons than I have mentioned, for thinking it would be improper for Mr Oldham to officiate as Judge Advocate at my trial. I never said that I was ready to communicate these reasons *on paper*. I have, for your private information and satisfaction, intimated that they were of a delicate nature. I am free to own, that I wish you not to press me farther. You have done what I must applaud, in giving due weight to the circumstance of Mr Oldham standing in the situation of a *witness*, summoned to give his testimony upon oath, in the prosecution against me: a character most assuredly incompatible with the office of Judge Advocate on the same occasion.

I shall, however, be ready, *when you are pleased to honour me with an audience*, to explain every point which you express a desire to know, and I am confident that when I shall have done so, you will do me the justice to bear testimony to the propriety of my conduct on the present occasion.

I have the honour to be, &c.
(Signed) A. COCHRANE JOHNSTONE.

[The following letters, though removed from the foregoing in respect to dates, are inserted here, from their immediate connection with the subject.]

From the Rt. Hon. Sir Charles Morgan, Bart. Judge Advocate General,
To the Hon. Colonel Cochrane Johnstone.

Downing-Street, 27th March, 1805.

SIR,

As I am informed, the evidence at your trial is now closed, and that you have not called upon Mr Oldham as a witness, whose testimony you represented to be indispensible, I cannot but say, that I feel very much hurt that, without waiting to receive from you a specification of those circumstances, which you considered as rendering him an improper person to officiate upon the occasion, I, as it were, set him aside, and superseded him

in the regular course of his duty. I am not clear, that I have not by that measure prejudiced him, and given him just cause of complaint, inasmuch as it may beget a presumption unfavourable to him in the opinion of the army. He sees the matter in that light, as do some of his friends, and he therefore urges me to press for an explanation from you of the objection which you had to his officiating as Deputy Judge Advocate General at your trial, which, in justice to him, I cannot decline.

I have the honour to be, &c.

(Signed) CHARLES MORGAN.

From the Honourable A. Cochrane Johnstone,
To the Rt. Hon. Sir Charles Morgan, Bart. Judge Advocate General.

67, *Harley-Street, 27th March,* 1805.

SIR,

I have this moment had the honour of receiving your letter of this date; in answer to which, I beg leave to state, that it was my intention to have examined Mr Oldham, as well as several officers of high rank, who were also summoned on my part; but circumstances occurred during the trial, which rendered it unnecessary for me to press the subject on the Court.

I am much at a loss to conceive how Mr Oldham can suppose himself hurt at not having been examined, or how it can possibly beget a presumption unfavourable to him in the opinion of the army, which it is far from my intention to promote.

I have the honour to be, &c.

(Signed) A. C. JOHNSTONE.

CORRESPONDENCE

WITH

THE DEPARTMENT

OF

THE COMMANDER IN CHIEF,

FROM

SEPTEMBER 1803, TO AUGUST 1804.

TO

THE RIGHT HONOURABLE

LORD VISCOUNT MELVILLE,

FIRST LORD COMMISSIONER OF
THE ADMIRALTY.

My Lord,

I am aware that I expose myself to no light charge of presumption, in wishing to draw your attention to the following correspondence.

The true reason, and my best apology for addressing your Lordship on this occasion, are to be found in the subject of the publication, and in circumstances relative to it, which I shall ever be proud to acknowledge.

It was my lot, at an early period of life, to enter on the wide stage of the world, with no other fortune than what consisted of honourable connections, of fair fame, and the kind partiality and friendship of your Lordship.

In the course of fifteen years spent in the laborious, and I may truly affirm, the zealous service of my King and Country, for the most part in un-

healthy and intemperate climates, I rose, through your Lordship's patronage, to the distinguished, and perhaps unmerited situations, of Governor of the Island of Dominica, of Colonel of the late 8th West-India Regiment, and of Brigadier General in the West-Indies.

Your Lordship then filled the office of His Majesty's Principal Secretary of State for the War Department; and I had the happiness of finding that my conduct met with your approbation, while it gave general satisfaction to the inhabitants of the Island.

But scarcely had your Lordship resigned the Seals of office, when I experienced a sudden, and to me an unaccountable reverse of situation and fortune.—Deprived of my Government, of my Regiment, and of the rank of Brigadier General, I returned to my native country, at the end of full twenty-one years faithful military service, in the reduced state of a Colonel on half-pay.

To fill up the measure of my misfortunes, in the last army promotion, which took place a few weeks after my return, when my seniority, as a Colonel, entitled me to the rank of Major General, my name was ordered to be omitted.—And, though no charge was brought against me, nor a shadow of reason assigned or avowed for this accumulation of punishments, the most gross and scandalous falsehoods were invented and circulated against me, as if a concerted scheme had been formed in pure mischief and malice, to run down and trample upon me, as the devoted victim of calumny, oppression, and persecution.

That I felt these combined assaults, and felt them acutely, I have no wish to dissemble—But,

I thank God, that a mind conscious of innocence and of rectitude supported me; and my firmness never forsook me one moment.

My anxious desire was to obtain a full and fair investigation of my conduct; to lay open to public view every act of my life, during the command, of which I had been deprived. I considered this as the most proper answer for me to make to the numerous falsehoods propagated by concealed calumniators—I felt it as the mode of redress most becoming a gentleman, and a soldier—a man who values life less than honour.—I judged it the most consolatory and satisfactory duty, which it was in my power to discharge to my friends, and which I was more especially and imperiously called upon to perform, in gratitude, and in justice to your Lordship, to whose opinion and predilection for me, any imputation suffered to remain upon my character unrefuted, might appear to be a reproach.

It is this consideration which suggested to me the propriety of addressing to your Lordship the following pages; you will there read the history of my exertions to attain the object of my most earnest wishes. These exertions hitherto, whether deservedly or not, have been unsuccessful; and while matters continue in their present situation, being precluded from proof, and from legal means of justification, all that is left within my power is, to assert my innocence, and this I do, with the most solemn appeal to heaven for the truth of my asseveration.

In the mean time, should the unthinking, malignant, or prejudiced part of the public, be disposed

to hold calumny as evidence of guilt, and to pass sentence of condemnation upon me without Trial or Defence; I have the satisfaction of knowing, that I shall find a more equitable tribunal in all candid and honest minds, which, like your Lordship's, are superior to prejudice, and capable of estimating the real difference, and immense distance, between ACCUSATION and CONVICTION.

I have the honour to be, with great truth, and with affectionate respect,

My Lord,

Your Lordship's

Most faithful

And obliged humble Servant,

A. COCHRANE JOHNSTONE.

Harley-Street, August 13, 1804.

CORRESPONDENCE, &c.

From The Hon. Colonel Cochrane Johnstone,
To Colonel Calvert, Adjutant General.

2, *Holles-Street, Cavendish-Square, September* 7, 1803.

SIR,

I had the honour of waiting upon you this day, in obedience to the standing orders of the army, for every officer to report himself on his arrival in this country from abroad. Although I personally had the good fortune to see you, I still think it my duty to address you in writing, to request you will be pleased to take the earliest opportunity to inform his Royal Highness the Commander in Chief, of my arrival from the West-Indies; and to mention, that my stay there was protracted in the hopes of receiving an answer to the letters, which I had the honour of addressing to his Royal Highness.

Upon the knowledge of the commencement of hostilities between our country and France, I was detained a close prisoner in Fort Richepance, Guadaloupe, for the space of fourteen days; and after much discussion, it was at last decided that I should be allowed to hire a neutral vessel to depart, of which I availed myself, and arrived at Montserrat, where I embarked on board the Prince Ernest Packet, for this country.

It is with great concern I find that many reports, prejudicial to my character, have been, with much industry,

propagated concerning my conduct during the time I had the honour to command at Dominica.

The justice and impartiality of his Royal Highness the Commander in Chief, will, I am confident, not suffer such reports, equally false, as they are malicious, to make any unfavourable impression on his mind. I have not yet had an opportunity of vindicating myself.—No charge has been communicated from any official quarter. That I may be enabled to prove my innocence, *I do most earnestly request, that you will prevail upon his Royal Highness to order all the supposed charges to be collected, and that I shall be ready at any time, and before any Court, to answer them.* We may all err from want of judgment, but I think I may venture to say, that, during a period of twenty years constant service, I have never intentionally deviated from the strict line of my duty, as a Military Officer; and have always acted as a faithful servant to my King and Country.

I have the honour to remain,

With much respect, &c.

(Signed) A. COCHRANE JOHNSTONE.

From Colonel Clinton, Secretary to the Commander in Chief, To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, September 10, 1803.

SIR,

I have received the Commander in Chief's commands to transmit herewith, for your information, Copy of a Letter, written to you on the 1st. ultimo, and transmitted for furtherance to Lieutenant General Grinfield; and for the reasons therein stated, I am now to signify to you his Royal Highness's desire, that you will lose no time in bringing forward, in due form, your charges therein alluded to, against Major Gordon late of the 8th West-India Regiment.

I have the honour to be,

SIR, &c.

(Signed) W. H. CLINTON.

(Copy Letter enclosed.)

From Colonel Clinton, Secretary to the Commander in Chief, To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, August 1, 1803.

SIR,

I have received the Commander in Chief's commands to acquaint you, that in consequence of the very serious charges preferred for the information of his Royal Highness, in your letter to Major General Brownrigg, of the *20th of October last,* against Major Gordon, of the late 8th West-India Regiment, the Commander in Chief has thought proper to resist the offers of service of that officer; and as he cannot be employed until said charges have been cleared up perfectly to the Commander in Chief's satisfaction, in justice to the service, and to Major Gordon, I am to signify to you, his Royal Highness's Commands, that *you repair to England forthwith,* in order that the matter in question may be brought to a termination.

I have, &c.

(Signed) W. H. CLINTON.

From the Honourable Colonel Cochrane Johnstone, To Colonel Clinton, Secretary to the Commander in Chief.

Hopetoun-House, September 20, 1803

SIR,

I have had the honour of receiving your letter of the 10th of September, enclosing copy of your's of the 1st of August, in *reply* to the one which I had the honour of addressing to his Royal Highness the Commander in Chief, on the *20th of October last year.*

When I applied for a Court Martial upon Major Gordon, I presumed that the Court would be ordered to assemble in the *West Indies, where we then both were, and where alone, without great trouble, many of the witnesses and original documents could be produced.* I do not think, either in jus-

tice to Major Gordon, or to myself, that the Court can be assembled in *this country*. If, however, *His Royal Highness the Commander in Chief should be pleased to order a Court of Enquiry, to examine the nature of the evidence which it is in my power to produce in this country, and that they shall report for the prosecution here, I shall comply.* If Major Gordon will admit copies of certain papers, in my possession, to be received as evidence before any court, which may assemble here for his trial, in that event the delay may be avoided, and the investigation can take place in this country.

I am here upon a visit to my family for a short time. Immediately on my return to London, I shall have the honour of waiting upon you, to receive his Royal Highness the Commander in Chief's commands on this subject.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

MEMORIAL

From the Hon. Colonel Cochrane Johnstone,
To His Royal Highness the Commander in Chief.

2, *Holles-Street, October* 4, 1803.

HUMBLY SHEWETH,

That your memorialist, upon examining the List of Promotions of Major Generals, published in the London Gazette of Saturday last, perceives that, although from his rank as Colonel, he came within the number of those who have been promoted, his name has been omitted. Your memorialist, feeling the utmost anxiety to have his conduct cleared up, and his character as an Officer relieved from all imputation, *had requested, by a letter to the Adjutant General, dated the 9th of September last, to have an enquiry instituted for that purpose; to which he has hitherto received no answer.* Under these circumstances, however anxious he may feel to be placed in his rank in the army, and thereby relieved from the imputation which has been cast upon him, by omitting him in the promotion, yet he is anxious to express to your Royal Highness his conviction, that this measure has been the natural result of the

application which he had made for enquiry into his conduct: but your memorialist is, therefore, the more urgent and anxious that such an enquiry should be instituted, and humbly hopes, that his extreme earnestness upon this subject, which prompts him thus immediately to address your Royal Highness, will meet with that favourable reception, which is the natural result of that justice which distinguishes the character of your Royal Highness.

Your memorialist, therefore, humbly prays that your Royal Highness will be pleased to give your commands, that an inquiry may be instituted, of the nature referred to in his letter of the 9th of September, to the Adjutant General; not doubting but that, when his character and conduct shall be cleared up before such tribunal, His Majesty will be graciously pleased to place him in the rank of Major General, according to his seniority as a Colonel in the Army.

(Signed) ANDREW COCHRANE JOHNSTONE.

From the Hon. Colonel Cochrane Johnstone,
To Colonel Clinton, Secretary to the Commander in Chief.

London, October 4, 1803.

SIR,

I had the honour of addressing you from Hopetoun-House, on the 20th of September, in reply to the letter which I received from you, dated the 10th.

Since my arrival from Scotland, I have done every thing in my power to have an interview with you, but without effect.

I have now to request that you will either do me the honour of answering my letter, or of favouring me with an interview.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

From Colonel Clinton, Secretary to the Commander in Chief, To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, October 4, 1803.

SIR,

The reason, if I mistake not, why your letter, dated from Hopetoun-House, was not replied to, was that in the letter you stated you should soon be in London. I am obliged to set apart a time every day for seeing those persons who have official business with me: that time is between one and two, and any gentleman who will call before half past one, I endeavour to see as soon after that time as the circumstances will enable me to do; if it should be convenient to you to call any day, at that hour, I shall certainly be at this office.

I am, Sir,
Your obedient Servant,
(Signed) W. H. CLINTON.

From the Hon. Colonel Cochrane Johnstone, To the Adjutant General.

2, Holles-Street, Cavendish-Square, October 7, 1803.

SIR,

I had the honour of applying to you personally and by letter, some time ago, stating, that as I understood Major Gordon had detained several officers of the late 8th West India Regiment in this Country, with a view to a General Court Martial taking place; I also requested that Captain Lucas, of the 68th Regiment, and Captain Mc Ghie, of the late 8th West-India Regiment, might be detained also. I am sorry to find that no order has been given for their detention, notwithstanding my application, and that they are under orders for foreign service. I can only attribute this circumstance to the multiplicity of business.

I have the honour to be, &c.
(Signed) A. COCHRANE JOHNSTONE.

From the Hon. Colonel Cochrane Johnstone,
To Colonel Clinton, Secretary to the Commander in Chief.

2, Holles-Street, Cavendish-Square, October 7, 1803.

SIR,

I had the honour of an interview with you on the 5th, and was sorry to find *that you were not instructed to give me any answer* to the letter, which I addressed to you from Hopetoun-House on the 20th of September last—I am waiting, with much anxiety, for your answer to it.

I have likewise to request, that you will do me the favour to remind His Royal Highness the Commander in Chief, of the memorial which I had the honour of transmitting to him on the 4th instant, in consequence of being omitted in the promotion of Major Generals, which must convey to the world an imputation prejudicial to my character.

I have secluded myself from all society, until I shall have an opportunity of proving to the public, the falsehood of the supposed charges against me. I trust, therefore, that His Royal Highness will see the justice of allowing me a speedy opportunity of vindicating myself, and that he will pardon the importunity of repeating my request.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

From Colonel Clinton, Secretary to the Commander in Chief,
To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, October 10, 1803.

SIR,

Having had the honour to lay before the Commander in Chief, your letter of the 20th ultimo, and the same having, by direction of His Royal Highness, been

referred to Major Gordon, for his answer to the proposals therein contained, I am now commanded to transmit, for your information, Copy of a Letter, which has in consequence been received from Major Gordon, expressive of his desire to meet whatever charges you may prefer against him; I am therefore to signify his Royal Highness's desire, that, for the reasons communicated to you in my letter of the 10th ultimo, you will lose no time in bringing forward the charges you are desirous to exhibit at a Court Martial against Major Gordon.

I have the honour to be, &c.

(Signed) W. H. CLINTON.

(Enclosed.)

From Major Gordon, To Colonel Clinton.

194, *Piccadilly, Sep.* 30, 1803.

SIR,

I have had the honour to receive your letter of the 28th instant, signifying the desire of the Commander in Chief, that I would communicate to you, for the information of His Royal Highness, my answer to what is proposed by Colonel Johnstone Cochrane, in his letter to you, dated 20th of September, relative to evidence to be admitted in support of the charges preferred against me by Colonel Johnstone Cochrane, in his letter dated 20th of October last.

In obedience to the commands of the Commander in Chief, I beg leave to repeat what I have had already the honour to submit to His Royal Highness, that I am most willing and anxious to meet the charges of Colonel Johnstone Cochrane; and that to any proper evidence he can produce I will make no objection; but as to certain papers, or copies of papers, stated to be in his possession, of the authenticity, purport, or tendency of which I am totally ignorant, it is out of my power to sanction their admission

as evidence. It must rest with the Court appointed to investigate my conduct, to determine how far such evidence is admissible, where the character of an officer unimpeached during twenty-six years service, and his commission, which is his sole dependance, are at stake. But, at all events, I am willing, without reserve, to meet the charges preferred against me by Colonel Johnstone Cochrane, in such manner as His Royal Highness the Commander in Chief shall be pleased to direct.

I have, &c.

(Signed) JOHN GORDON,
Major late 8th West-India Regt.

From The Hon. Colonel Cochrane Johnstone,
To Colonel Clinton, Secretary to the Commander in Chief.

2, *Holles-Street, Cavendish-Square, Oct.* 15, 1803.

SIR,

On the evening of the 12th, I had the honour of receiving your letter dated the 10th instant. I must take the liberty of recalling to your particular attention the terms of my letter of the 20th ultimo, as I am apprehensive, from the tenor of your letter of the 10th, that the alternatives, which I then submitted to you, have not been distinctly in your recollection.

I took the liberty to represent, that when I applied for a Court-Martial on Major Gordon, it was upon a presumption that the trial would take place in the West-Indies, where we then both were, and all the necessary documents and witnesses were within my reach; but that I did not think that a Court Martial could be assembled in this country, in justice either to Major Gordon or myself. I suggested, therefore, that a *Court of Enquiry* might be assembled, to examine the evidence which I have it in my power to produce in this country; and if that Court reported in favour of the prosecution here, I would immediately comply; or, if Major Gordon would admit copies of certain papers, I should proceed to bring him to trial here.

It appears now, that Major Gordon declines making those admissions. I should have humbly hoped, therefore, that His Royal Highness the Commander in Chief would have been pleased to have taken my first alternative into consideration, and instead of a *Court Martial*, would have ordered a *Court of Enquiry*, as the defect of evidence to be laid before a Court Martial, does not arise from any want of attention on my part, but from the accident of Major Gordon and myself being no longer in the country, where the acts of which I accuse him took place.

I hope, under these circumstances, to be pardoned for requesting you to represent to His Royal Highness, with all humility on my part, my anxiety, that the alternative of a Court of Enquiry should be taken into consideration by His Royal Highness, as by that means, possibly, every object of justice and example may be put in a course to be obtained.

As to the witnesses, most of them are in this country. But the documents to which I referred, and which consist of the proceedings of a Court of Enquiry on the accounts of the Regiment, held at Barbadoes in May, 1802, and an account current settled by Major Gordon with auctioneers, in Dominica, of the name of James and Addison, as transmitted by me to His Royal Highness the Commander in Chief, in my letter of the 20th of October, 1802, are in the West Indies. If copies of these are admitted by Major Gordon, I cannot hesitate to proceed in my charges against him, before a Court Martial here, without delay. If these copies are not admitted, I may be considerably embarrassed in my proofs. But still, *if after this explanation*, (for which, I trust, I shall be pardoned, under the circumstances in which I am placed) *His Royal Highness the Commander in Chief shall intimate his pleasure that I should, nevertheless, bring the charges against Major Gordon before a Court Martial, I shall proceed with the utmost alacrity to obey the commands of His Royal Highness.*

I have the honor to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

From Colonel Clinton, Secretary to the Commander in Chief,
To The Honourable Colonel Cochrane Johnstone.

Horse-Guards, Oct. 26, 1803.

SIR,

I have received the Commander in Chief's commands to acquaint you, in reply to your letter of the 15th instant, *that His Royal Highness, having taken the whole of your correspondence, relative to your charges against Major Gordon of the 8th West-India Regiment, into mature consideration, is pleased to order that a Court Martial be assembled to investigate the same;* in order to which, I am to signify to you the Commander in Chief's desire, that you state, specifically and concisely, the instances of misbehaviour which you impute to Major Gordon, with as little delay as possible, that a proper warrant may be prepared for His Majesty's Signature, for the holding of the said Court Martial.

I have the honor to be, &c.
(Signed) W. H. CLINTON.

From The Hon. Colonel Cochrane Johnstone,
To Colonel Clinton, Secretary to the Commander in Chief.

Holles-Street, Oct. 28, 1803.

SIR,

I have had the honour of receiving your letter of the 26th, and in obedience to the commands of His Royal Highness the Commander in Chief, communicated by you to me, I shall, with as little delay as possible, transmit to you the charges against Major Gordon, of the late 8th West-India Regiment.

I have the honour to be, &c.
(Signed) A. COCHRANE JOHNSTONE.

From the Hon. Colonel Cochrane Johnstone,
To Major General Calvert, Adjutant General.

London, Nov. 5, 1803.

SIR,

In obedience to the commands of His Royal Highness the Commander in Chief, signified to me in Colonel Clinton's letter of the 26th of October, I have now the honour of enclosing to you my charges against Major Gordon, of the late 8th West-India Regiment.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

CHARGES

AGAINST MAJOR GORDON

OF THE

LATE 8th WEST-INDIA REGIMENT.

FIRST CHARGE.

For having entered into a co-partnership with the late Lieutenant Mackay, the acting Quarter-Master, relating to the baking for, or furnishing bread to the 8th West-India Regiment, and for taking and receiving from him different sums of money, as the profit and emolument arising therefrom, contrary to his duty, and in derogation of his character of a Commanding Officer, and to the prejudice of the service. Particularly betwixt the month of July, 1801, and the end of the month of April, 1802. And for receiving from Messrs. James and Addison, auctioneers, at Dominica, the profits arising from the sale of flour and rice, issued from the King's stores, stated by him, Major Gordon, to be the joint property of the late Lieutenant Mackay and himself.

SECOND CHARGE.

For certifying the Pay-lists of the 8th West India Regiment as Commanding Officer, and thereby signifying that the accounts of the men had been settled and paid to the 24th December, 1801, which accounts were sworn to on the 6th of April, 1802, before a Justice of the Peace at Dominica, and transmitted to the War-Office as just

and true accounts; whereas it appears, that, previous to the mutiny which took place on the 9th of April, 1802, that two of the Companies had been paid only to the 24th of October, and two to the 24th of November, 1801.

THIRD CHARGE.

For having received from the Pay-Master of the Regiment, at Barbadoes, different Sums of Money, issued by the warrant of the Commander of the Forces in the West-Indies, as a compensation to the representatives of the deceased Officers for their losses, namely, the sum of one hundred and twenty-two pounds ten shillings, for the deceased Captain Cameron, one hundred and thirty-nine pounds ten shillings, for the deceased Lieutenant Mackay, and sixty pounds for the deceased Lieutenant Wasteneys:—And for having quitted the West-Indies without accounting to the widow of the late Lieutenant Mackay for the above sum allowed for her husband, in consequence of which, she made repeated applications both to Lieutenant General Grinfield and myself; and for not having accounted for the above sums of money to the Officers of the Regiment, the War-Office, the Agent of the Regiment, or to the Representatives of the deceased Officers.

FOURTH CHARGE.

For quitting the Island of Barbadoes, in order to avoid being tried by a Court-Martial in the West-Indies, where the offences were committed, and the witnesses were resident, although I personally waited upon him to state that I had that moment arrived from Dominica, purposely to bring him to a Court-Martial for very serious charges against him, as Commanding Officer of my Regiment; for absconding after such notice; and for insolence and disrespect to me upon the occasion.

(Signed) A. COCHRANE JOHNSTONE.
Colonel late 8th West-India Regt.

From The Hon. Colonel Cochrane Johnstone,
To His Royal Highness the Commander in Chief.

Hopetoun-House, near Edinburgh, Nov. 21, 1803.

SIR,

It is with extreme reluctance that I now address Your Royal Highness; but I am convinced that you will pardon me, when you reflect upon the situation in which I am now placed by Your Royal Highness having ordered my name to be omitted in the promotion of Major Generals, which must convey to the world an imputation prejudicial to my character.

Upon the 9th of September last, the day after my arrival in this country from abroad, I addressed a letter to the Adjutant General, requesting that he would be pleased to move Your Royal Highness to order an investigation into my conduct, during my command at Dominica. To that letter I have not yet been honoured with any answer.

Upon the 4th of October last, in consequence of being omitted in the promotion of Major Generals, I took the liberty of transmitting a Memorial to Your Royal Highness, earnestly entreating that you would be pleased to order an investigation into my conduct, and that I trusted, after my character should be cleared up to the satisfaction of His Majesty, that He would graciously be pleased to place me in the rank of Major Generals, agreeably to my seniority as a Colonel. To that Memorial I have not yet been honoured with any answer.

I am well aware of the important concerns which must occupy the attention of Your Royal Highness at this time, and no consideration, except that of vindicating my character, would induce me to intrude upon Your Royal Highness. That consideration which is my sole motive, I trust, will be accepted of as my apology on the present occasion.

The situation in which I am placed is peculiarly distressing. In consequence of my name having been omitted in the promotion of Major Generals, I stand, unfortunately, in the view and general opinion of the world, as a con-

victed offender, who has received the sentence, and suffered the punishment due to his crime: yet it is known to Your Royal Highness, that no charge whatever has been brought forward, nor enquiry instituted against me; and I beg leave solemnly to declare, that I am not conscious of my conduct having been in any instance, or in any respect, inconsistent with my duty as a loyal and faithful subject, or derogatory to my character and rank as a servant to His Majesty.

Thus circumstanced, I presume to hope, that Your Royal Highness will pardon my present humble entreaty, that you will be pleased to take the Memorial, which I had the honour of transmitting to Your Royal Highness on the 4th of October last, into your early consideration.

I have the honour to remain, with sentiments of the utmost respect,

Your Royal Highness's
Most obedient,
And most humble Servant,
(Signed) A. COCHRANE JOHNSTONE.
Colonel late 8th West-India Regt.

From Lieutenant Colonel Wynyard, Deputy Adjutant General,
To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, Nov. 15, 1803.

SIR,

I have directions to return to you the charges you transmitted to the Adjutant General, against Major Gordon of the late 8th West-India Regiment, at the same time to acquaint you, that before they can be inserted in a special warrant for the King's signature, it will be necessary that they should undergo some small degree of alteration, which you will perceive specified in pencil, in the charges 1, 2, and 4; the charge 3 it is recommended to insert, as stated, in the accompanying paper in ink.

I have the honour to be, &c.
(Signed) W. WYNYARD.
D. A. G.

From Lieutenant Colonel Wynyard, Deputy Adjutant General,
To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, Nov. 23, 1803.

SIR,

Not having received a reply to my letter of the 15th instant, enclosing the charges you transmitted to the Adjutant General against Major Gordon, of the late 8th West-India Regiment, with certain pencil alterations which were considered necessary to be introduced, before they could be inserted in a warrant for His Majesty's signature; I am commanded to request you will return the same to the Adjutant General, with as little delay as possible.

I have the honour to be, &c.
(Signed) W. WYNYARD.
D. A. G.

From Colonel Clinton, Secretary to the Commander in Chief,
To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, Dec. 6, 1803.

SIR,

Referring to my letter of the 26th October last, communicating to you the Commander in Chief's commands to give in, with as little delay as possible, whatever charges you may intend to prefer against Major Gordon, of the late 8th West India Regiment, I am directed to repeat the same, and to express His Royal Highness's surprise, that it has not already been complied with, it being desirable that a business which has been so long pending, should be brought to a conclusion.

I have the honour to be, &c.
(Signed) W. H. CLINTON.

From the Hon. Colonel Cochrane Johnstone,
To Lieutenant Colonel Wynyard, Deputy Adjutant General.

London, Dec. 13, 1803.

SIR,

I have the honour of returning to you the charges against Major Gordon.

I did not receive your two letters of the 15th and 23d November, until my return from Scotland yesterday. Your first letter was sent to Scotland after me, and returned from the Post-Office at Edinburgh, under the idea that I was in London. Your other letter was sent to Mr Adam, and retained by him, with the first, until my arrival in town. Having heard from my correspondent in London, that you had addressed to me several letters, I immediately left Scotland, and travelled post without stopping.

I trouble you with this explanation, in order that you may remove from the mind of His Royal Highness the Commander in Chief, any impression which he may entertain of my having been dilatory in giving in my charges against Major Gordon. *The charges were given in by me so far back as the 5th of November last, and I left London, for Scotland, with the permission both of the Adjutant General, and of the Deputy Judge Advocate General, who informed me, that the Court Martial could not be assembled for a considerable time.*

I stated that I should be ready, at a moment's notice, to return to London; and when in Scotland, I wrote to the Deputy Judge Advocate General, Mr Oldham, to request he would inform me, if any time had been fixed for the trial taking place.

I was much astonished to receive a letter yesterday from Colonel Clinton, dated the 6th instant, referring to a letter he had wrote to me upon the 26th October last, and stating, that His Royal Highness the Commander in Chief was much surprised that I had not complied with the contents of the letter of the 26th of October last, in giving in my charges against Major Gordon, as it was desirable that a business so long pending should be terminated.

I trust that you will do me the favour of stating to His Royal Highness, that I did comply with the contents of Colonel Clinton's letter of the 26th of October, with as little delay as possible, and that my charges against Major Gordon, were *actually given in on the 5th of November last;* if any delay has since taken place, it has arisen from accidents for which I am not accountable. No person can be more anxious than I am, for the termination of this business, and I trust that you, and those who take the trouble of perusing my correspondence on this subject, from the 8th of October, 1802, will do me the justice of being of this opinion.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

It is unnecessary to insert the charges as transmitted. Colonel Johnstone adopted the alterations, as suggested by Colonel Wynyard, except in leaving out the charge No. 4, as originally given, which it was recommended to withdraw.

From Lieutenant Colonel Wynyard, Deputy Adjutant General,
To the Hon. Colonel Cochrane Johnstone.

The Deputy Adjutant General requests to speak to the Honourable Colonel Cochrane Johnstone, To-morrow, between the hours of one and two, on the subject of the charges he has exhibited against Major Gordon, of the late 8th West India Regiment.

Horse-Guards, Dec. 15, 1803.

From the Hon. Colonel Cochrane Johnstone,
To Lieutenant Colonel Wynyard, Deputy Adjutant General.

Colonel Cochrane Johnstone has had the honor of receiving Colonel Wynyard's note, requesting to see him between the hours of one and two o'clock, which he will not fail to attend to, this day.

Holles-Street, Dec. 16, 1803.

At this meeting Colonel Wynyard informed Colonel Johnstone, that he must positively withdraw the fourth charge as originally given in, as it was resolved not to include it in His Majesty's Warrant; Colonel Johnstone was consequently under the necessity of complying, and the charges were then arranged as finally given in.

From His Royal Highness the Commander in Chief,
To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, Dec. 10, 1803.

SIR,

I have received your letter of the 21st November, in which you request to have answers to the letter which you addressed on the 9th of September last to the Adjutant General, and the memorial which you addressed to me on the 4th of October last, in both which you pressed for an investigation into your conduct during your command at Dominica.

In regard to the former letter, I am sorry to be under the necessity of reminding you, that on the very day after you had sent it to the Adjutant General, you called upon him, and stated that, for reasons which you then explained, you were under the indispensible necessity of absenting yourself from London immediately, and requested that he would explain the circumstances to me, in order to justify your being absent at such a moment; and this circumstance sufficiently accounts for any delay which may have taken place in regard to the investigation in question. *Your letter was nevertheless referred to Lord Hobart for his opinion.* As, however, you have yourself exhibited charges against Major Gordon, I do not now see the possibility of taking any steps respecting the investigation of your conduct, until Major Gordon's trial is disposed of.

In regard to your promotion to the rank of Major General, I must observe to you, that it is an invariable rule of the service, not to include, in any general brevet promotion, an officer (whatever may be his rank) against whom there exist charges, the merit of which has not been decided. Whenever an investigation shall have

taken place, and should the result prove favourable to you, there will not be any difficulty in your recovering the rank to which your seniority as Colonel entitles you.

I am, Sir,
Yours, &c.

(Signed) FREDERIC,
Commander in Chief.

From the Hon. Colonel Cochrane Johnstone,
To His Royal Highness the Commander in Chief.

2, *Holles-Street, Dec.* 21, 1803.

SIR,

Your Royal Highness's letter of the 10th I had the honour of receiving only this day, it having been addressed to me at Hopetoun-House, near Edinburgh, which place I left on the 8th, and arrived here on the 11th.

I think it my duty to state this to Your Royal Highness, to account for the delay in answering the letter, which it becomes me to take the earliest opportunity of acknowledging.

Upon the 10th of September, the day after I had the honour of addressing my letter to the Adjutant General, I waited upon him to state, that in consequence of an unjust threat made by a mercantile house in the city, to arrest me for a sum of money which I did not owe; my much respected friend and counsel, Mr Adam, (to whom I beg leave to appeal for the accuracy of my statement) had recommended to me to go to Scotland for a few days, until that house should be forced to produce their books, in order to prove the falsehood of their claim, and the oppression of their proceedings. I considered it to be incumbent upon me to communicate this to the Adjutant General, for the information of Your Royal Highness, in order to explain the cause of my departure from London, giving notice, at the same time, that any letters from Your Royal Highness would find me at the seat of the Earl of Hopetoun, near Edinburgh.

The person who had threatened the arrest having become sensible of his unjustifiable conduct, our accounts

were speedily adjusted, and I returned to London upon the 28th of September, *having been absent only fourteen days.* I immediately reported myself to the Adjutant General, and requested to be informed whether there was any return to the letter I had the honour of addressing to him upon the 9th of September. His answer was, that he had laid that letter before Your Royal Highness, but had not received your commands on the subject.

I have taken the liberty of stating thus particularly, the true cause of my short absence from London upon the occasion to which Your Royal Highness alludes, to guard against the effect of injurious impressions, which possible misrepresentations of that circumstance might tend to create in the mind of Your Royal Highness.

I have now only to return my most grateful thanks for the honour you have conferred upon me, by your letter of the 10th, and as I perceive that Your Royal Highness *has referred my letter, of the 9th September, to Lord Hobart, for his opinion, I humbly trust Your Royal Highness will think, that his Lordship has had sufficient time to make up his mind upon the subject.*

I respectfully observe what Your Royal Highness is pleased to mention, as to the effect of the pending investigation into Major Gordon's conduct, and I hope Your Royal Highness will pardon me for humbly intreating, that you will give such directions as you shall judge proper, for obtaining all possible dispatch in the business; as the situation of my private affairs renders it of the greatest consequence for me to be enabled to return to the West-Indies before the end of January.

I have the honour to remain, with sentiments of the utmost respect,

Your Royal Highness's
Most obedient,
And most humble Servant,
(Signed) A. COCHRANE JOHNSTONE.
Colonel late 8th West-India Regt.

From the Right Honourable Sir Charles Morgan, Bart.
Judge Advocate General,
To the Honourable Colonel Cochrane Johnstone.

Judge Advocate General's Office, Dec. 22, 1803.

SIR,

Being informed that a special warrant is prepared for His Majesty's signature, appointing a General Court Martial for the trial of Major Gordon, of the late 8th West-India Regiment, upon several charges preferred against him, I have, for the sake of dispatch, obtained a copy of the several articles as therein recited, and transmit the same to you herewith. As soon as the warrant under the sign manual shall be transmitted to me, no time will be lost in convening the Court Martial, which will be held at the Royal Hospital, Chelsea. In the mean while, if there are any witnesses necessary for supporting the charges whom you wish to be officially summoned, you will be pleased to acquaint me with their names and addresses.

I have the honour to be, &c.
(Signed) CHARLES MORGAN.

CHARGES

PREFERRED AGAINST MAJOR GORDON,

OF THE

LATE 8th WEST-INDIA REGIMENT.

FIRST CHARGE.

HAVING entered into a co-partnership with the late Lieutenant Mackay, the acting Quarter Master, relating to the baking for, or furnishing bread to the 8th West-India Regiment, and for taking and receiving from him different sums of money, as the profit and emolument arising therefrom, contrary to his duty, and in derogation of his character of a Commanding Officer, and to the prejudice of the service, betwixt the month of July, 1801, and the end of the month of April, 1802.

SECOND CHARGE.

Having unwarrantably received from Messrs. James and Addison, Auctioneers, at Dominica, on or about the month of April, 1802, the profits arising from the sale of flour and rice issued from the King's stores, stated by him, Major Gordon, to be the joint property of the late Lieutenant Mackay and himself.

THIRD CHARGE.

Having in Pay-lists of the 8th West India Regiment, certified by him as Commanding Officer, signified that the accounts of the men had been settled and paid to the 24th of December, 1801, which accounts were transmitted to the

War-Office as just and true accounts; whereas two of the companies had been paid only to the 24th of October, and two to the 24th of November, 1801.

FOURTH CHARGE.

Having received from the Pay-Master of the Regiment at Barbadoes, and injuriously and contrary to his duty, withheld different Sums of Money, issued by the warrant of the Commander in Chief of the Forces in the West-Indies, as a compensation to the representatives of the deceased Officers for their losses, namely, the sum of One hundred and twenty-two pounds ten shillings, for the deceased Captain Cameron, one hundred and thirty-nine pounds, ten shillings, for the deceased Lieutenant Mackay, and sixty pounds for the deceased Lieutenant Wasteneys:—and for having quitted the West-Indies, without accounting to the widow of the late Lieutenant Mackay, as was his duty to have done, for the above sum of one hundred and thirty-nine pounds, ten shillings, allowed for her husband's losses; and for not having accounted for the above sums of money to the Officers of the Regiment, the War-Office, the Agent of the Regiment, or to the Representatives of the deceased Officers.

From the Hon. Colonel Cochrane Johnstone,
To the Right Hon. Sir Charles Morgan, Bart. Judge Advocate General.

2, *Holles-Street, Dec.* 23, 1803.

SIR,

I have had the honour of receiving your letter of yesterday's date; in consequence of which, I now enclose a list of the witnesses: but I beg leave to apprize you, that I shall not consider myself as liable to defray any part of the expence attending their being summoned.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE,
Colonel, late 8th W. I. Regt.

From the Hon. Colonel Cochrane Johnstone,
To Colonel Clinton, Secretary to the Commander in Chief.

2, *Holles-Street, Dec.* 23, 1803.

SIR,

Having received from the Judge Advocate General, a copy of the charges preferred against Major Gordon, of the late 8th West India Regiment, with a notice that a special warrant is prepared for his trial, I have to request, that I may be allowed to examine, at your office, the letters which I had the honour of addressing from the West Indies, to the Commander in Chief, with the relative papers, and such other documents as may be material in the trial.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

From the Hon. Colonel Cochrane Johnstone,
To the Right Hon. Sir Charles Morgan, Bart. Judge Advocate General.

2, *Holles-Street, Dec.* 27, 1803.

SIR,

In consequence of your letter to me of the 22nd, enclosing copy of the charges against Major Gordon, I was in hopes of being informed by this time, that a day was appointed for commencing his trial.

Permit me to acquaint you, that the situation of my private affairs renders it of the utmost consequence to me, that my stay in this country, at present, should be as short as possible. You will therefore confer upon me the greatest obligation, by taking the necessary steps, in order to bring the above business to a speedy conclusion.

I have the honour to remain,

With respect, &c.

(Signed) A. COCHRANE JOHNSTONE.

From Colonel Clinton, Secretary to the Commander in Chief, To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, Dec. 30, 1803.

SIR,

I have the honour to acknowledge the receipt of your letter of the 23d instant, and to acquaint you, that the request therein made, is under the consideration of the Commander in Chief, whose pleasure thereupon I shall not fail to communicate to you as soon as I shall receive it.

I have the honour to be &c.

(Signed) W. H. CLINTON.

From the Hon. Colonel Cochrane Johnstone, To the Right Honourable Sir Charles Morgan, Bart. Judge Advocate General.

2, *Holles-Street, December* 31, 1803.

SIR,

I have to request that you will be so obliging as to direct the following Officers, who are to be witnesses on the trial of Major Gordon, to bring with them the pay-books of the different companies of the 8th West-India Regiment, paid by them to the 24th of December, 1801, viz.

Captain Barr, his pay book.—Captain Cummings, his pay book.—Lieutenants Alexander and Allan Cameron, to produce the pay books of Captain Cassin's and Captain Cameron's companies, if in their possession; or any papers relative to the payment of these companies. The reason of this is, that Captain Cassin is in the West Indies, and Captain Cameron was killed at the mutiny.

Lieutenant Alexander Cameron, to produce the pay book of Captain Arbuthnot's company.

Major Gordon, to produce my letter to him dated Dominica, the 29th of November, 1801.

(Signed) A. COCHRANE JOHNSTONE.

From Colonel Clinton, Secretary to the Commander in Chief, To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, December 31, 1803.

SIR,

Referring to my letter of yesterday, I have received the Commander in Chief's commands to acquaint you, in reply to your letter of the 23d instant, that he cannot agree to what is therein requested, the more particularly as the same has been refused to Major Gordon, upon the ground that His Royal Highness considers it irregular to furnish any documents from this office, to the parties concerned in a matter on the point of being investigated by a Court Martial.

I have the honour to be, &c.

(Signed) W. H. CLINTON.

From the Hon. Colonel Cochrane Johnstone, To His Royal Highness the Commander in Chief.

2, *Holles-Street, January* 2, 1804.

SIR,

On the 23d of last month I applied to Colonel Clinton, by letter, requesting, that as a warrant was prepared for the trial of Major Gordon, I might be allowed to examine, at his office, the letters which I had the honour of addressing from the West Indies, to your Royal Highness, with the relative papers, and such other documents as might be material in the trial.

On the morning of the 31st, I received a letter from Colonel Clinton, acquainting me, that the request was under the consideration of Your Royal Highness; and in the evening of the same day, I had another letter from Colonel Clinton, stating, that he had received the commands of Your Royal Highness to acquaint me, that you would not agree to the request in my letter of the 23d, more particularly as the same had been refused to Major Gordon, upon the ground that you consider it irregular to furnish any documents to the parties concerned in a matter on the point of being investigated by a Court Martial.

I trust Your Royal Highness will pardon me, for humbly recalling to your recollection, that when I received your commands to bring Major Gordon to trial in this country, I took the liberty of representing *the difficulty and embarrassment that might arise, from part of the evidence necessary to substantiate the several charges, being in the West Indies.*

Your Royal Highness was pleased to take these circumstances into your consideration, and finally to give *your decision for bringing the trial in this country.*

In consequence of this, I have proceeded, in discharge of my duty of obedience to Your Royal Highness, to collect such evidence as was within my reach, in order to be produced in the trial; and it appeared to me to be essential for the same purpose, to inspect the papers mentioned in my letter of the 23d.

Upon these, and other documents, the charges against Major Gordon are founded, and the Court will expect to be well informed of the grounds on which the prosecution proceeds.

Permit me to state to Your Royal Highness, that the question at issue, is not one between *Major Gordon* and *myself*, as two private parties. My individual interest cannot be affected by the result, but a much more important interest is at stake, that of His Majesty's service, and the character and discipline of the army.

In obeying the directions of Your Royal Highness, I considered myself to act in an official capacity, as prosecutor, jointly with His Majesty's Judge Advocate of public offences, and that I have a claim, in common with other public officers, for obtaining inspection, or production of all documents necessary to enable me to perform the public duty with which I am charged.

It is not for me to presume to say, what are the rights of a prisoner on such an occasion; but until he knows what documents are to be founded on by the prosecutor, it should seem that he cannot state what he has a right to call for, or what he will be permitted by the Court to produce in his defence.

The prosecutor on the other hand, must come into Court with all his evidence duly prepared.

I have only farther to entreat Your Royal Highness's

forgiveness of the trouble I found myself under the necessity of giving you by this letter; and I humbly hope, that you will be graciously pleased to consider the difficulty and disagreeable predicament in which I shall be placed, by having the commands of Your Royal Highness for prosecuting this trial, without obtaining your permission to receive such communications as may be requisite to enable me, with propriety and effect, to carry those commands into execution.

I have the honour to remain, with sentiments of the utmost respect,

Your Royal Highness's
Most obedient, and
Most humble Servant,
(Signed) A. COCHRANE JOHNSTONE.

From Colonel Clinton, Secretary to the Commander in Chief, To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, January 3, 1804.

SIR,

I am directed by the Commander in Chief, to acknowledge his receipt of your letter of yesterday's date, and to acquaint you in reply thereto, that His Royal Highness's opinion on the subject thereof, having been already communicated to you in my letter of the 31st ultimo, His Royal Highness has not any thing to add thereto; but he has no objection that you should address yourself upon the subject in question, to the Judge Advocate General.

I have the honour to be, &c.
(Signed) W. H. CLINTON.

From the Hon. Colonel Cochrane Johnstone, To the Right Honourable Sir Charles Morgan, Bart. Judge Advocate General.

January 12, 1804.

SIR,

I have the honour of enclosing to you, copies of a correspondence which has passed on the sub-

ject of an application which I made to His Royal Highness the Duke of York, for permission to examine, at his Office, certain papers and documents essentially necessary for the prosecution against Major Gordon.

It is essentially necessary that those papers should be communicated to me previous to the trial, and I therefore think it my duty to acquaint you, as His Majesty's Judge Advocate General, of the propriety, in my opinion, of complying with my request, in order that you may take such steps as to you shall seem proper in your official capacity.

I have the honour to remain,

With much respect, &c.

(Signed) A. COCHRANE JOHNSTONE.

From the Hon. Colonel Cochrane Johnstone,
To Colonel Clinton, Secretary to the Commander in Chief.

Horse-Guards, January 14, 1804.

SIR,

I am now waiting agreeable to an information received from the Judge Advocate General, that if I call upon you, I shall be permitted to peruse the papers required by me for the Court Martial on Major Gordon, of the late 8th West-India Regiment.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

At this meeting, Colonel Johnstone was only permitted to peruse those letters which he had addressed to His Royal Highness the Commander in Chief, from the West-Indies;—the inspection of all other papers required by him was refused.

From the Right Honourable Sir Charles Morgan, Bart.
Judge Advocate General,
To the Honourable Colonel Cochrane Johnstone.

Judge Advocate General's Office, January 19*th*, 1804.

SIR,

I have now the honour to acquaint you, that the General Court martial for the trial of Major John

Gordon, of the late 8th West-India Regiment, is appointed to be held at the Royal Hospital, at Chelsea, on Monday, the 30th instant, at ten o'clock in the morning.

Enclosed I send you letters of summons for several of the witnesses whom you represented as material in support of the charges, which you will cause to be delivered: the other witnesses whom you pointed out have been written to.

I have the honour to be, &c.
(Signed) CHARLES MORGAN.

From the Hon. Colonel Cochrane Johnstone,
To the Right Honourable Sir Charles Morgan, Bart. Judge Advocate General.

67, *Harley-Street, January* 20, 1804.

SIR,

I had the honour of receiving, yesterday evening, your letter of the 19th instant, informing me that the General Court Martial, for the trial of Major Gordon, of the late 8th West-India Regiment, is appointed to be held at Chelsea, on Monday, the 30th instant.

I likewise received your letters of summons for several witnesses, whose presence was required by me. I have made every possible enquiry for Mr Seward, Pay-master of the late 8th West-India Regiment, but without effect. I therefore submit to you the propriety of stating to the War-Office, the necessity of causing some public notice to be given in General Orders, that Mr Seward's presence is required at the said Court-Martial.

I have the honour to be, &c.
(Signed) A. COCHRANE JOHNSTONE.

From the Hon. Colonel Cochrane Johnstone,
To Major General Calvert, Adjutant General.

67, *Harley-Street, January* 24, 1804.

SIR,

On the 19th instant I had the honour of receiving a letter from the Judge Advocate General, in-

forming me that the Court Martial on Major Gordon, was fixed for Monday next, the 30th, and transmitting a summons among others, to be forwarded to Mr Seward, late Pay-Master of my Regiment.

I had for weeks past made every inquiry in my power to discover Mr Seward's residence and address, without effect. At the same time I had the strongest reason to believe, that he was, on some account or other, in concealment, though to be heard of at *Major Gordon's Lodgings, No.* 194, *Piccadilly*; accordingly, the summons was sent thither, and the person who received it there, said, that it should be immediately forwarded to Mr Seward, but declined to say where he was.

Under these circumstances, I think it my duty, as joint prosecutor with his Majesty's Judge Advocate General, considering that Mr Seward has not acknowledged either to me, or to the Judge Advocate, (as the other gentlemen summoned have done) the receipt of the summons, and that his concealment may be intended, by depriving the prosecutor of his testimony, to frustrate the purposes of public justice, to submit to you, for the consideration of His Royal Highness the Commander in Chief, the propriety of calling upon Mr Seward, by notice in the Gazette, or in such other manner as shall be judged proper, to give his attendance at the trial of Major Gordon, in obedience to the Judge Advocate's summons, issued for that purpose.

I have the honour to remain,
With respect, &c.
(Signed) A. COCHRANE JOHNSTONE.

From the Hon. Colonel Cochrane Johnstone,
To His Royal Highness the Commander in Chief.

London, February 21, 1804.

SIR,

It is with extreme reluctance that I presume to call your attention for one moment at this time, to any matter relating to myself, and I pray Your Royal Highness to believe that necessity alone compels me to it.

I trust it is in the recollection of Your Royal Highness,

that almost six months have elapsed since I took the liberty of humbly, but earnestly, requesting an investigation into my conduct, and in consequence of your having ordered my name to be omitted in the late promotion of Major Generals, I have secluded myself from society, until the final decision of my fate.

I have had the honour of acquainting Your Royal Highness with the urgent situation of my private affairs in the West-Indies, which renders my presence there of the utmost consequence to me.

The Court Martial on Major Gordon, which Your Royal Highness seemed to consider as connected with the requested investigation on my part, finished its proceedings a week ago.

In the mean time, I am informed that all the Officers of the late 8th West-India Regiment, since appointed to other West-India corps, have been ordered to join immediately.

The testimonies of these Officers are essential, and indispensable, for the purpose of ascertaining the genuine merits of my conduct now brought in question, and consequently of enabling my judges to decide upon it with justice.

Under these circumstances, I humbly flatter myself, that Your Royal Highness will be graciously pleased to give the necessary directions for detaining the Officers above referred to, in this country, till their depositions shall be taken in my trial, and also for expediting this business with all convenient dispatch.

I have the honour to remain, with sentiments of the utmost respect, your Royal Highness's most obedient, and most humble servant,

(Signed) A. COCHRANE JOHNSTONE.

From Lieutenant Colonel Wynyard, Deputy Adjutant General,
To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, February 23, 1804.

SIR,

Before any order can be issued for detaining in England the Officers of the late 8th West-India

Regiment, it will be necessary for you to furnish the Adjutant General with a list of all those whose presence upon your Court-Martial (as witnesses) you consider absolutely necessary, when an order to that effect will be immediately transmitted, through the several Agents of the Regiments, to which the Officers alluded to respectively belong. I have the honour to be, &c.

(Signed) W. WYNYARD.

From the Hon. Colonel Cochrane Johnstone,
To Lieutenant Colonel Wynyard, Deputy Adjutant General.
67, Harley-Street, February 23, 1804.

SIR,

I have this moment had the honour of receiving your letter of this date, informing me, "that before any order can be issued for detaining in England, "the Officers of the late 8th West-Indian Regiment, it "will be necessary for me to furnish the Adjutant General "with a list of all those, whose presence I consider upon my "Court-Martial (as witnesses) to be absolutely necessary, "when an order will be given immediately to that effect."

I therefore now enclose a list of the names of all the Officers of the late 8th West-India Regiment, at present in England. How far the presence of one or all of these may be absolutely necessary, as witnesses in my trial, you will be sensible that it is impossible for me to say, when I state, that, to this hour, I have never heard of any charges having been preferred against me.

During the last six months that I have constantly resided in this country, and have, with all due respect, repeatedly and earnestly solicited His Royal Highness the Commander in Chief, to order an investigation into my conduct during my command at Dominica, I have never been favoured with the notice even of an intention to bring forward a charge of any kind against me.

On the contrary, when I had the honour of a personal interview with His Royal Highness last Tuesday, on this subject, he was pleased in the most explicit terms, to desire me, "distinctly to understand, that he had no charges "against me, but that he would search his papers, to dis-"cover, whether Major Gordon had given in any, and

"would inform me." This promised communication from His Royal Highness has not yet been received.

It is a matter of indifference to me who appears as my prosecutor; my sole wish and request is, that the Court Martial on my conduct, which, in justice to me, I humbly apprehend ought to have been held long ago, may take place without further delay, so injurious to my character, as well as to my affairs, and that I may not be precluded from the possibility of availing myself of such evidence, as shall be essential for obtaining justice.

I am informed that Major Gordon, immediately on his arrival in this country, was favoured by the Commander in Chief with full information of the nature of the charges against him, which I had transmitted to His Royal Highness from the West Indies; by means of which, he was enabled to make all preparations for his defence, during almost twelve months previous to his trial.

If Major Gordon has given in to His Royal Highness any charges against me, I humbly conceive that the same measure of justice that was dealt out to him, should not have been withheld from me.

However that may be, I must now take the liberty of requesting, that you will be pleased to move His Royal Highness to give directions, that whatever charges have been brought against me, shall be forthwith communicated to me; in order that I may have it in my power to answer that part of your letter, respecting the particular officers now under order for embarkation, for the West Indies, whom I shall consider to be absolutely necessary, as witnesses, to refute the charges on which I am to be tried.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

From Lieutenant Colonel Wynyard, Deputy Adjutant General,
To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, February 28, 1804.

SIR,

In reply to the part of your letter of the 23d instant, respecting the charges which may be ex-

hibited against you by Major Gordon, I am directed to inform you, that *the several papers relative thereto, will be referred to, and the subject taken into consideration; the result of which will be communicated to you, by His Royal Highness the Commander in Chief's Public Secretary.*

I have the honour to be, &c.

(Signed) W. WYNYARD.

From the Hon. Colonel Cochrane Johnstone,
To the Right Honourable Sir Charles Morgan, Bart. Judge Advocate General.

67, *Harley-Street, March* 11, 1804.

SIR,

I take the liberty to address you on a subject materially connected with my private affairs; on which account, I trust you will have the goodness to excuse the trouble I give you.

The Court Martial on Major Gordon has necessarily detained me in this country, during a period when very important interests required my presence in the West Indies. That trial, as you know, terminated about a month ago, and an event which all must regret, has occasioned a delay of making the result public. Fortunately, a prospect now opens of that delay being of little longer duration; at the same time, as it would be of the greatest consequence to me, not to lose the earliest opportunity of settling some arrangements previous to my leaving England,—I should consider it as a most particular favour, if you can give me an idea of the probable interval that may yet take place, before the proceedings of the Court Martial on Major Gordon will be submitted by you to his Majesty's consideration.

I have the honour to remain,
With much respect, &c.

(Signed) A. COCHRANE JOHNSTONE.

From the Right Honourable Sir Charles Morgan, Bart. Judge Advocate General, To the Honourable Colonel Cochrane Johnstone.

Downing-Street, Sunday-Night, March 11, 1804.

SIR,

An attention to your request contained in your letter of this day's date, will be amongst the many inducements in determining me to take the very first proper opportunity of submitting the proceedings, upon the trial of Major Gordon, with several other official matters, to his Majesty's consideration. But it is utterly impossible for me to ascertain in any degree, the interval which may necessarily take place, before an opening may present itself; as not only his Majesty's strength, after so serious an illness, must be consulted; but it is to be considered, that many matters of much importance to the state, which his Majesty's Ministers may have to suggest, must have the preference. I can only repeat, that there shall not be any delay on my part.

I have the honour to be, &c.

(Signed) CHARLES MORGAN.

From the Hon. Colonel Cochrane Johnstone, To Major General Calvert, Adjutant General.

67, *Harley-Street, April* 21, 1804.

SIR,

In an audience with which I was honoured by the Commander in Chief several weeks ago, His Royal Highness informed me, that he intended to enquire, whether Major Gordon was to prefer any charges against me. I have since learnt, that Major Gordon was accordingly written to on the subject, from the office of His Royal Highness; but I have received no communication with respect to the result.

In the mean time, the sentence of the Court Martial on Major Gordon is unknown, and may possibly remain so

when the Major's charges of recrimination shall be brought forward. Should this be the case, my situation will be peculiarly hard, especially in as far as it would be impossible to avail myself of the proceedings in the Major's trial, in order to establish the inadmissibility of certain evidence, which, I understand, will be attempted to be produced in support of the prosecution. The only way by which I can supply that defect, is, by having recourse to the testimonies of the members of the Court Martial, in Major Gordon's trial, particularly of the Right Honourable president Lieutenant General Fox.

Matters being thus circumstanced, I am under the necessity of representing to you, that it becomes essential for the purposes of justice, that General Fox should remain in this country till the conclusion of my trial; and of requesting you to make this known to the Commander in Chief, so as timely directions may be given for postponing the General's departure.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

From the Hon. Colonel Cochrane Johnstone,
To the Right Hon. Sir Charles Morgan, Bart. Judge Advocate General.

Harley-Street, May 22, 1804.

SIR,

In an audience with which I was honoured this day by His Royal Highness the Commander in Chief, I was given to believe, that charges had been exhibited against me by Major Gordon, of the late 8th West India Regiment, and His Royal Highness appeared surprised *that I had not received them from you.*

I have also to express my surprise, that no communication has been made to me on the subject; and I have to request, that no delay may take place in transmitting to me, a copy of whatever charges have been given in against me, by Major Gordon, in order that I may have sufficient time to prepare myself to refute them.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

From the Right Hon. Sir Charles Morgan, Bart.
Judge Advocate General,
To the Hon. Colonel Cochrane Johnstone.

Downing-Street, Wednesday-Night, May 23, 1804.

SIR,

At my return home late this evening, from a meeting upon business, which has occupied the whole of the day, I find upon my table, a letter from you of yesterday's date, wherein you express a surprise, that I had not made you acquainted with charges, which you are informed have been exhibited against you by Major Gordon, and request, that no delay may take place in transmitting to you a copy of whatever charges have been given in against you, in order that you may have sufficient time to prepare yourself to refute them. I therefore lose no time in acqnainting you, that, without any express requisition on your part, I should, from inclination, as well as from motives of duty, have made known to you any such charges: *at present, I have had no intimation of them, except from your letter.*

I have the honor to be, &c.

(Signed) CHARLES MORGAN.

From the Hon. Colonel Cochrane Johnstone,
To His Royal Highness the Commander in Chief.

Harley-Street, May 26, 1804.

SIR,

I take the liberty of enclosing copy of a letter which I addressed to Sir Charles Morgan, the Judge Advocate General, in consequence of the audience with which I was honoured by Your Royal Highness, on the 22d, with a copy of his answer.

Public report states, that Major Gordon, of the late 8th West India Regiment, *(while under the sentence of a Court Martial,) had been directed by Your Royal Highness to exhibit whatever charges he might have against me.* If there is

any foundation for this report, I have to request that Your Royal Highness will be pleased to give orders that I may be furnished with a copy of such letter, and of Major Gordon's answer.

I have the honour to remain, with sentiments of the utmost respect,

Your Royal Highness's
Most obedient, and
Most humble Servant,
(Signed) A. COCHRANE JOHNSTONE.

From Colonel Clinton, Secretary to the Commander in Chief, To the Hon. Colonel Cochrane Johnstone.

Horse-Guards, May 28, 1804.

SIR,

I have the Commander in Chief's commands to acknowledge the receipt of your letter of the 26th instant, addressed to His Royal Highness, and to acquaint you that Major Gordon, having from time to time *transmitted letters, and verbally made general accusations,* highly affecting your character as an officer, whilst the 8th West India Regiment was under your command at Dominica, His Royal Highness felt it incumbent on him, as soon as the proceedings against Major Gordon had been concluded, *to call upon that officer* to state, *whether he meant* to bring forward any specific charges against you; and Major Gordon in answer, having acquainted me for His Royal Highness's information, that it was *his intention* to bring forward such charges; it was intended, in consequence thereof, that no time should have been lost in bringing this unpleasant business to a conclusion, *and directions were given accordingly to the Adjutant General, and the necessary witnesses were ordered to remain in this country, for the purpose of attending such Court Martial, as might be ordered for the investigation of the said charges.* In the mean time the Adjutant General having at the moment been taken dangerously ill, the steps ordered by the Commander in Chief were not carried into execution, a circumstance not known to His Royal Highness, when he saw you last.

I now have it in command to inform you, that *no time will be lost in furnishing the Judge Advocate General with such documents as may appear requisite for bringing the business to a conclusion.*

I have the honour to be, &c.
(Signed) W. H. CLINTON.

From the Hon. Colonel Cochrane Johnstone,
To His Royal Highness the Commander in Chief.

67, *Harley-Street, May* 29, 1804.

SIR,

I have received Colonel Clinton's letter of yesterday's date, containing Your Royal Highness's reply to my letter addressed to you on the 26th.

I shall forbear, at present, from making many observations which naturally present themselves to my mind, on perusing that reply.—I shall content myself with observing, with much satisfaction, that charges have been at last given in against me, and as they were furnished to the Adjutant General a considerable time ago to act upon, in consequence of which, the necessary witnesses had been ordered to remain in this country, I have therefore to request, that Your Royal Highness will be pleased to give orders that copies of these charges may be immediately transmitted to me, in order that I may have the opportunity of detaining in this country, any witnesses whom I may conceive to be necessary on my part, and of contributing, as far as lays in my power, to accelerate the investigation of my conduct, which I have so often, and so earnestly solicited, during a period of *nine months* constant residence in this country, *for that sole object.*

I have the honour to remain, with the utmost respect,
Your Royal Highness's
Most obedient,
And most humble Servant,
(Signed) A. COCHRANE JOHNSTONE.

From Colonel Clinton, Secretary to the Commander in Chief, To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, June 12, 1804.

SIR,

I have received the Commander in Chief's commands to acknowledge his receipt of your letter of the 29th ultimo, wherein you express your satisfaction that "Charges have at last been given in against you, as they "were furnished to the Adjutant General a considerable "time ago to act upon; in consequence of which, the "necessary witnesses had been ordered to remain in this "country, and therefore requesting that His Royal High-"ness will be pleased to give orders, that copies of these "charges may be immediately transmitted to you, &c.

In reply to the above, I am commanded to refer you to my letter to which you allude, and on which I must observe, that so far from its being mentioned that charges have at last been given in against you, &c. you will find it explicitly stated, "That no time will be lost in furnishing "the Judge Advocate General with such documents as "may appear requisite, for bringing the business to a "conclusion." *These documents are Major Gordon's specific charges against you, which have not yet been furnished by the Major, but which he is now called upon forthwith to produce.* And I am further commanded to acquaint you, that on these charges being given in, *if they shall appear to be of sufficient moment for an investigation* by a general Court Martial, they will be communicated to you, and His Majesty will be moved to issue a warrant for that purpose, so soon *as the decision shall have been declared upon the trial of Major Gordon.* I have the honour to be, &c.

(Signed) W. H. CLINTON.

From Major General Calvert, Adjutant General, To the Honourable Colonel Cochrane Johnstone.

SIR, *Horse-Guards, June* 20, 1804.

I take the earliest opportunity of obeying the Commander in Chief's directions, by transmitting to

you, for your information, a copy of the statement of the grounds on which Major Gordon has declared it to be his *intention* to form specific charges against you; and I am further directed to inform you, that the same *will be immediately taken into consideration, and such parts as are deemed fit to become the subject of investigation before a General Court Martial,* will be formed into charges, as concisely as the nature of the case will admit, and submitted to His Majesty, in order that a warrant may be prepared, for convening the said Court. I shall do myself the honour of transmitting to you a copy of these charges, as soon as possible after they are prepared.

I have the honour to be, &c.

(Signed) HENRY CALVERT.
A. General.

(Copy Paper enclosed.)

Statement of facts, on which to ground specific charges against Colonel Cochrane Johnstone, of the late 8th West-India Regiment, and late Brigadier General, commanding his Majesty's Troops, in Dominica.

FIRST CHARGE.

Having, contrary to his duty, and to the great injury of the Service, in or about the month of October, 1801, when he knew that the accounts of the Regiment were in confusion, clandestinely, under false pretences, obtained for his own use, from Richard Seward, Paymaster of the 8th West-India Regiment, by bill drawn upon the Agent, *and by him charged to the public,* the sum of Five Hundred Pounds Sterling, being money due by Government to the corps—whereby the Pay-Master was deprived of the means of satisfying the just demands of the Regiment, the accounts of the men were unpaid, *and discontent was excited in the corps:* And having, in or about the months of March or April, 1802, when he knew that the accounts of the Regiment were in disorder, and that the Pay-Master was much in arrear to the corps, directed, under false pre-

tences, above One Hundred and Forty Pounds Sterling, to be stopped from the Pay-Master, out of the subsistence of the Regiment, for his own use, contrary to his duty, and to the injury of the Regiment, and the Service.

SECOND CHARGE.

Having, contrary to his duty, and to the prejudice of the service, at times, between the month of July, 1801, and the end of April, 1802, suffered the Resident Pay-Masters, who were his Secretaries, to withhold, or retain, under false pretences, a part of the subsistence of the troops, whereby payments to Regiments were rendered partial and irregular. And in particular, having, with his knowledge, unwarrantably suffered Resident Pay-Master Charles Kerr, who was his Secretary, to retain in his hands under false pretences, in the months of March and April, 1802, immediately preceding the mutiny in the 8th West India Regiment; sums of money due on account of subsistence to that corps, to the amount of One Thousand Pounds Sterling, being about two months pay of the Regiment; whereby the balances of the men remained unavoidably unpaid, and *discontent and mutiny were excited in the corps*;—And it would appear, that Colonel Cochrane Johnstone had an interest in withholding the money, by his asserting both verbally, and in writing, a direct falsehood in vindication of Mr Kerr's conduct.

THIRD CHARGE.

Having employed, or directed to employ, the soldiers of the 8th West-India Regiment in manual labour, on his own lands, or on other works for his advantage, and neither paid nor directed them to be paid for their labour, contrary to his duty, and to the prejudice of the service. In particular, having repeatedly so employed and not paid for their labour, the whole, or a considerable part of a detachment of recruits belonging to the 8th West-India Regiment, consisting of about eighty men, quartered at Ro-

seau, the residence of Colonel Cochrane Johnstone, between the month of January and the end of July, 1801, and although under his immediate inspection, during the whole of that period, having totally neglected to have them instructed and trained to discipline, as his duty and the good of the Service required.

And having in the months of March and April, 1802, immediately preceding the mutiny of the 8th West-India Regiment, directed the Regiment to be employed in cutting wood, and clearing some swampy ground, in the neighbourhood of Prince Ruperts, in the Island of Dominica, with a view to convert the same to his own use, and having neither paid the men, nor directed them to be paid for their labour, *whereby discontent and mutiny were excited in the Regiment.*

FOURTH CHARGE.

Having repeatedly, between the months of August, 1801, and the end of July, 1802, in direct opposition to his duty, availed himself of his military power and authority to violate the laws of his country, and infringe the rights and liberty of the subject: and in particular, having in violation of the laws, and rights of the subject, on or about the 14th day of December, 1801, illegally caused to be arrested, with an armed military detachment, James Ryrie, a civil inhabitant of the Island of Dominica, and confined him in a Military Fort and Guard House; and in aggravation of this offence, having suffered the said James Ryrie, with his knowledge, to be assaulted, insulted, cruelly beat, and maltreated, by persons under his immediate influence and command, without taking any steps to prevent the same, or to discover and bring to justice the authors of such enormities, or the persons who employed them.

And having, on or about the 22d day of July, 1802, been further guilty of abusing his military power, and violating the laws and the liberty of the subject, by authorizing or permitting his own menial servant, in his presence, to insult and threaten with a pistol, Mr. Etienne La Caze, formerly a Lieutenant in Loyal Dominica Regiment, and

then residing in the Island; and to drag forcibly the said Etienne La Caze to Fort Younge, immediately adjoining the residence of Colonel Cochrane Johnstone, and illegally to deliver him a prisoner to the guard, and to have him confined, and a centinel with a drawn bayonet placed over him. These instances affording a glaring proof of the abuse of military power, and of conduct unbecoming an officer and a gentleman.

From the Hon. Colonel Cochrane Johnstone,
To Major General Calvert, Adjutant General.

Harley-Street, June 22, 1804.

SIR,

I had the honour of receiving yesterday evening, your letter of the 20th, enclosing a statement of the grounds on which Major Gordon has declared it to be his intention to form specific charges against me, and informing me that the same will be *immediately taken into consideration, and that such parts thereof as are deemed fit to become the subject of investigation before a General Court-Martial,* will be formed into charges, and submitted to His Majesty, in order that a warrant may be prepared for convening the Court.

It affords me peculiar satisfaction to receive the above communication, and I have to return you my best thanks for having taken the earliest opportunity in your power, of transmitting it to me. You will lay me under a particular obligation, by expressing to His Royal Highness the Commander in Chief, my anxious wish, and my most humble and earnest request, that no part of the grounds on which Major Gordon has proposed to found his charges against me, be permitted to be kept back from examination; but that the whole matter of the statement which has been given in by him, may be comprised in the Warrant for His Majesty's Signature, *as I am extremely desirous that every part of my conduct, whether in my situation, as His Majesty's Governor of Dominica, or as a Brigadier General, be submitted to the cognizance of a General Court Martial.*

I trust that no further delay will take place in declaring

the sentence on the trial of Major Gordon, as the proceedings in that trial, and a variety of documents produced in the course of it, are essentially important, and indispensible for my defence.

The mutiny act expressly provides, that the party tried by any General Court Martial, shall be entitled to a copy of the sentence and proceedings of such Court Martial, at the expiration of three months, after the sentence given by such Court, *whether such sentence be approved or not.*

It is now above *four months* since the sentence was given by the General Court Martial on Major Gordon; and in order that I may be enabled to prepare myself for my defence, it becomes necessary for the purposes of justice, that I may be now furnished with an official copy of the proceedings.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

From the Right Hon. Sir Charles Morgan, Bart. Judge Advocate General,
To the Honourable Colonel Cochrane Johnstone.

Sir Charles Morgan presents his compliments to Colonel Johnstone, and conceiving that he is naturally anxious to know the result of the General Court Martial, upon the trial of Major Gordon; *the proceedings whereof, Sir Charles had the honour of laying before His Majesty yesterday;* takes this early opportunity of intimating the same to him, which he cannot do more clearly than by sending a copy of a letter, which signifies, the King's pleasure to His Royal Highness the Commander in Chief.

Downing-Street, June 29, 1804.

(Copy Letter enclosed.)

Judge Advocate General's Office, June 29, 1804.

SIR,

I had the honour of laying before the King, the proceedings of a General Court Martial, held at the Royal Hospital at Chelsea, on the 30th day of January

last, and continued by adjournments until the 14th day of February, for the trial of Major John Gordon, of the late 8th West India Regiment, upon the four following charges, preferred against him, by the Honourable Andrew Cochrane Johnstone, Colonel of the said Regiment, *viz.*

First.—Having entered into a co-partnership with the late Lieutenant Mackay, the acting Quarter-Master, relating to the baking for, or furnishing bread to, the 8th West India Regiment; and taking and receiving from him different sums of money, as the profit and emolument arising therefrom, contrary to his duty, and in derogation of the character of a commanding officer, and to the prejudice of the service, betwixt the month of July, 1801, and the end of the month of April, 1802.

Second.—Having unwarrantably received from Messrs James and Addison, Auctioneers, at Dominica, on or about the month of April, 1802, the profits arising from the sale of flour and rice, issued from the King's stores, and stated by him, Major Gordon, to be the joint property of the late Lieutenant Mackay and himself.

Third.—Having, in the Pay-Lists of the 8th West India Regiment, certified by him as Commanding Officer, signified, that the accounts of the men had been settled and paid to the 24th of December, 1801, which accounts were transmitted to the War Office, as just and true accounts; whereas, two of the companies had been paid only to the 24th of October, and two to the 24th of November, 1801.

Fourth.—Having received from the Pay-Master of the Regiment, at Barbadoes, and injuriously and contrary to his duty, withheld different sums of money issued by the warrant of the commander of the forces, in the West Indies, as a compensation to the representatives of the deceased officers, for their losses; namely, the sum of One Hundred and twenty-two Pounds ten shillings, for the deceased Captain Cameron: One Hundred and thirty-nine Pounds, ten shillings, for the deceased Lieutenant Mackay; and sixty Pounds for the deceased Lieutenant Wasteneys. And having quitted the West Indies, without accounting to the widow of the late Lieutenant Mackay, as was his duty to have done, for the above sum of One Hundred and thirty-nine Pounds, ten shillings, allowed for her husband's losses. And not having accounted

for the above sums of money to the Officers of the Regiment, the War-Office, the agent of the Regiment, or to the representatives of the deceased officers. Upon due investigation of which said articles of charge, the Court Martial have decided as follows:

The Court Martial, having most attentively and deliberately weighed the whole of the Evidence adduced by the Prosecutor, the Honourable Colonel Johnstone, and that brought forward by Major Gordon in his defence; is of opinion, that Major Gordon is not guilty, and doth therefore acquit him, with respect to the first and second articles of charge; it having been established to the satisfaction of the Court, that Regiments in the West Indies, have usually been allowed to bake for themselves, and that in such case, a certain saving was known to accrue therefrom, without diminishing the regulated allowance to the soldier; and that such saving was not clandestinely, but according to known usage, divided between the Quarter-Master, who superintended the baking, and the commanding officer; the one moiety, as a remuneration to the Quarter-Master for his trouble, and the other moiety, as a fund in the hands of the commanding officer, for the benefit of the Regiment.

The Court however think, that Major Gordon has been very irregular in not keeping an account of the monies, which he received on that account, as well as of the expenditure, which might have enabled him to have stated the same correctly, instead of the vague distribution thereof given to the Court.

The Court is of opinion, that Major Gordon is NOT GUILTY with respect to the Third Charge, and doth therefore acquit him;—*but the Court cannot forbear observing, that there appears to have been culpable neglect in having suffered the certifying of the pay-lists, for the months of October, November, and December,* 1801, *to be procrastinated until the 6th of April,* 1802; *which circumstance Major Gordon admits, and on that ground rests the truth of the certificates, which would not have been true in fact, had the certificates been signed by him at the end of those respective periods.*

With regard to the Fourth Charge, the Court doth also acquit Major Gordon, the same not having been established by evidence, to the satisfaction of the Court.

It has, however, appeared to the Court, that Major Gordon did receive the sums of money stated in the Charge, on account of the deceased officers therein named; but he has shewn, that the monies so received, were applicable towards the payment of the debts of those respective officers; and that he has accounted to the relatives of Captain Cameron, for the money received on his account, and has paid several sums of money, on account of the two other officers, named in the Charge, viz. Lieutenant Mackay, and Lieutenant Wasteneys; but although the Court does not consider the monies in question, as coming under the description of the 1st Article of the 19th section of the Articles of War, *Major Gordon appears to have been negligent, and to have subjected himself to censure, in not having taken further measures, in order to have accounted for the whole of the monies which he had received, on account of those two officers; and the Court is of opinion, that he should be called upon to render a satisfactory account to His Majesty's Secretary at War, of the expenditure, as well as of the balances now remaining in his hands.*

And I am commanded to acquaint Your Royal Highness, that His Majesty has ratified the opinion of the Court Martial, upon the several articles of Charge, and has been pleased to direct, that Major Gordon do, according to the injunction of the Court expressed in their sentence, deliver to the Secretary at War, a distinct statement of whatever monies he has received, upon account of deceased officers, as also of the manner in which the same has been distributed, and the balance (if any) remaining in his hands.

His Majesty has further directed me to notice, that neither the Prosecutor, nor the Defendant has acquired any credit, by the manner in which they have respectively conducted themselves during the trial, each of them industriously pressing extraneous matter upon the Court, to the extreme protraction of the proceedings; and each of them, as if urged by a rooted animosity, endeavouring to depreciate the character, and to place every act of the other in the most unfavourable point of view.

I have the honour to be, &c.

(Signed) CHARLES MORGAN,

Duke of York Field Marshal,
Commander in Chief of His Majesty's Forces.

From the Hon. Colonel Cochrane Johnstone,
To Major General Calvert, Adjutant General.

Harley-Street, July 2, 1804.

SIR,

Having reason to believe that my trial on the Charges preferred by Major Gordon will proceed immediately, I hope you will excuse the trouble I now give you, by requesting that you will have the goodness to lay before His Royal Highness the Commander in Chief, my humble representations of the propriety, under the peculiar circumstances of the case, of forming the Court Martial of Officers of the Line, especially such as have served in the West Indies, whose professional duties and experience must particularly qualify them for judging of the subject of these charges.

In making this application, nothing can be farther from my thoughts, than to convey the slightest insinuation to the prejudice of that most respectable, honourable, and gallant body of His Majesty's servants, the Officers of the Guards, many of whom I am proud to call my friends, and for all of whom I have the highest esteem; but as a variety of circumstances relating to the constitution and discipline of the Regiments of the line, in particular the form of returns, and pay-lists, are totally different from any thing known or practised in the Guards; I trust His Royal Highness will be sensible, that I merely aim at a fair object of justice.

For the same purpose I have farther to entreat, that you will communicate to the Commander in Chief, my humble hopes, that His Royal Highness will be pleased to give the necessary orders, that the Court Martial, on my trial, shall not be composed of any of the Officers, who were members of the Court Martial on the trial of Major Gordon. For all these gentlemen I entertain the greatest respect, but I am confident, that they themselves, would not be inclined to decide upon a case, which they may be considered as having, in some measure, prejudged.

I have the honour to be, &c.

(Signed) A. C. JOHNSTONE.

From the Hon. Colonel Cochrane Johnstone,
To the Right Hon. Sir Charles Morgan, Bart. Judge Advocate General.

Harley-Street, July 2, 1804.

SIR,

I have received your note of the 29th June, enclosing a copy of your letter to the Commander in Chief, acquainting His Royal Highness with the sentence of the General Court Martial on Major Gordon, and with a censure pronounced by His Majesty, upon my conduct in the course of the trial.

Conscious of my being actually under military arrest, and preparing for my own Court Martial, I feel the propriety of forbearing, at present, to make any observations, either upon that sentence, or upon the *censure* which His Majesty has been advised to inflict upon me, *in the peculiar situation in which I am placed.*

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

From Lieutenant Colonel Wynyard, Deputy Adjutant General,
To the Hon. Colonel Cochrane Johnstone.

Horse Guards, July 2, 1804.

SIR,

Your letter of this day's date, I have had the honour to lay before the Commander in Chief: His Royal Highness directs me to express to you his very great surprise at the contents thereof, being of a nature perfectly inadmissible; and commands me to observe, that a General Court Martial will be convened for your trial, composed of Officers, whose rank and services make them eligible for the duty; and that upon the assembly of the General Court Martial, you will be allowed to make your challenge, in the manner prescribed by law.

I have the honour to be, &c.

(Signed) W. WYNYARD.
D. A. G.

From the Hon. Colonel Cochrane Johnstone,
To Lieutenant Colonel Wyngard, Deputy Adjutant General.

67, *Harley-Street, July* 4, 1804.

SIR,

I had the honour of receiving, last night, your letter of the 2nd instant, in answer to mine of that date, and cannot sufficiently express my regret, that the contents of any letter from me should have excited the very great surprise of the Commander in Chief, or have been considered by His Royal Highness to be of a nature perfectly inadmissible.

May I be permitted to request, you will take an early opportunity of making known to His Royal Highness, my dutiful and respectful attention to the communication, and my humble hope and trust, that he will be pleased to accept, as proof of the innocence and purity of my intention that, in the application I made, I did believe myself to do no more than simply exercise the inherent right, which I understood every British Officer, in similar circumstances, possesses, of submitting his claims in justice to the Commander in Chief; and that several Officers of the highest respectability and rank in His Majesty's Service, to whom I shewed the letter in question, previous to dispatching it to the Adjutant General, entirely approved of it.

I have only further to return my sincere and grateful thanks, for His Royal Highness's most gracious assurance, that the Court Martial to be convened for my trial, will be composed of Officers, whose rank and services make them eligible for the duty; an assurance, which completely answers my most anxious wish, and the full extent of the humble supplication, which I had the honour of conveying, through the Adjutant General, to His Royal Highness.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

From the Hon. Colonel Cochrane Johnstone,
To Lieutenant Colonel Wynyard, Deputy Adjutant General.

Harley-Street, July 7, 1804.

Colonel Cochrane Johnstone presents his compliments to Colonel Wynyard, and if he has received the charges against him as finally given in by Major Gordon, will be extremely obliged to him to favour him with a copy of them. Colonel Johnstone trusts that Major Gordon has been called upon to give in a list of his witnesses, in order that the trial may take place as soon as possible; and if any time has been fixed for the assembling of the General Court Martial, Colonel Johnstone trusts that Colonel Wynyard will inform him.

From Lientenant Colonel Wynyard, Deputy Adjutant General,
To the Hon. Colonel Cochrane Johnstone.

Horse-Guards, July 7, 1804.

Colonel Wynyard presents his compliments to Colonel Cochrane Johnstone; begs to acquaint him, that as soon as Major Gordon transmits to this Office the charges finally arranged, a copy shall be made and sent for Colonel Johnstone's information. Colonel Wynyard has to inform Colonel Johnstone, that the time for assembling the General Court Martial, cannot be ascertained, until the charges are given in, and the list of evidence transmitted to the Judge Advocate General, who will issue his notices as soon as the warrant is signed by His Majesty, of which immediate information shall be made to the parties concerned, and Colonel Johnstone may be assured, the business will not be delayed in the Office of the Adjutant General.

From the Hon. Colonel Cochrane Johnstone,
To His Royal Highness the Commander in Chief.

Harley-Street, July 9, 1804.

SIR,

On the 28th *of May last,* I received a letter from Colonel Clinton, informing me that he had it in command from Your Royal Highness to inform me, *that no time would be lost in furnishing the Judge Advocate General with such documents, as might appear requisite for bringing the business of my Court Martial to a conclusion.*

In consequence of that information, I confidently trusted, that within a few days thereafter, I was to be put in possession of whatever charges were intended to be preferred against me, and at the same time, that the necessary directions would be given for assembling a General Court-Martial, in order to my immediate trial on these charges.

From the 28*th of May,* I waited in the humble and anxious expectation of receiving the farther commands of your Royal Highness, until *the 20th of June,* when I received a letter from the Adjutant General, enclosing a copy of the statement of the grounds on which Major Gordon had declared it to be his intention to form specific charges against me; and informing me, that the same would *be taken into consideration, and such parts as were deemed fit to become the subject of investigation before a General Court-Martial,* would be formed into charges, and submitted to his Majesty, in order that a warrant should be issued, for convening the said Court.

In my answer of the 22*d of June,* acknowledging the receipt of the above information, I had the honour of expressing my satisfaction, that charges had been at last given in against me, and my earnest request *that no part of the grounds,* on which Major Gordon had proposed to found those charges, should be permitted to be kept back from examination, but that the whole of the statement given in by him should be comprised in the warrant for his Majesty's Signature, as I was desirous that every part

of my conduct, whether, in my situation of his Majesty's Governor of Dominica, or of a Brigadier General, should be submitted to the cognizance of the General Court Martial.

On the 7th of this month, I had the honour of making an application to Colonel Wynyard, the Deputy Adjutant General, requesting that, if he had received the charges brought against me by Major Gordon, he would favour me with a copy of them, and adding, that I trusted Major Gordon had been called upon to give in a list of his witnesses, in order that the trial might take place without loss of time.

In answer to the above, Colonel Wynyard has informed me, that Major Gordon *has not yet given in his charges against me finally arranged.*

I humbly flatter myself, that your Royal Highness on perusing the preceding statement, will be convinced that an unnecessary delay has taken place somewhere; and to me, the delay of justice, in all its severe and cruel consequences, is little less than actual injustice.

To your Royal Highness, as the Commander in Chief of his Majesty's Forces, I look up for redress. It is precisely *ten months* this day, since I first applied for an investigation into my conduct, and your Royal Highness well knows, how often, and how earnestly, during that long and dreary period, I have repeated my application. Deprived of my right to the rank of Major General, and in conseqnence held up to the world, as a convicted offender, though neither tried, nor arraigned, I can appeal to no tribunal superior to that high sense of honour which resides in the breast of your Royal Highness, and which so well enables you to judge, what my feelings must have been, during the whole of the period I have mentioned.

I did hope that not a day would have been lost, in convening the General Court-Martial for my trial. I now find that Major Gordon has not even given in his charges.

Thus circumstanced, I am under the necessity of representing, with becoming humility, that unless your Royal Highness shall be graciously pleased to interpose with your commands, the very painful state of suspence

under which I have so long suffered, may still be protracted to a length too much for human nature to endure.

I have the honour to remain, with the utmost respect,
Your Royal Highness's
Most obedient, and
Most Humble Servant,
(Signed) A. COCHRANE JOHNSTONE.

From Lieutenant Colonel Wynyard, Deputy Adjutant General,
To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, July 11, 1804.

SIR,

I have directions to acquaint you, in reply to your letter to the Commander in Chief, of the 9th instant; that his Royal Highness is not aware of any measures having been pursued by any department, under his Royal Highness's orders, which could be considered as calculated to protract the enquiry into your conduct, while acting in your official capacity in the West Indies:—The charges preferred against you were returned to Major Gordon, for the purpose of being more clearly and specifically stated, before they were inserted in a warrant, for the King's signature; and I take leave to observe, that you had the fullest assurance from this office, that every thing possible should be done to expedite the business, as soon as the several charges were so worded and arranged, as to enable the Secretary at War, to order them to be inserted in a warrant, for the royal sign manual.

I am directed to acquaint you, that Major Gordon has been *called upon, to return the charges in a corrected state, and transmit to the Judge Advocate General, a list of the evidence, he intends to bring forward in support of the prosecution.*

I have the honour, &c.
(Signed) W. WYNYARD.
D. A. G.

From the Hon. Colonel Cochrane Johnstone,
To his Royal Highness the Commander in Chief.

Harley-Street, July 20, 1804.

SIR,

On the *20th of last month,* I was favoured with a letter from the Adjutant General, enclosing copy of a draft of charges, given in by Major Gordon, and acquainting me, that the same should be put in due form to be laid before his Majesty, in order to a warrant being obtained for convening a General Court Martial.

In a subsequent interview with the Deputy Adjutant General, I was informed that little or nothing was wanted for the above purpose, but the insertion of some dates, in order to render the statements in the several charges more precise; and that the draft had been returned to Major Gordon, to supply those omissions.

On the *11th of the present month,* I was informed by letter from the Deputy Adjutant General, that Major Gordon had not returned the charges, but that he had been called upon to do so.

I am now informed, however, that Major Gordon has not complied with the requisition of the Adjutant General; and I humbly take the liberty of representing to your Royal Highness, that in consequence of that disobedience, the subject of the Adjutant General's letter to me, in which I am so deeply interested, remains on this *20th of July,* at the same point of progress where it stood on *the 20th of June.*

I have the honour to remain, with sentiments of the utmost respect.

Your Royal Highness's
Most obedient,
And most Humble Servant,
(Signed) A. COCHRANE JOHNSTONE.

From the Hon. Colonel Cochrane Johnstone,
To his Royal Highness the Commander in Chief.

67, *Harley-Street, July* 24, 1804.

SIR,

It is with much reluctance that I intrude myself on your Royal Highness, but the state of suspence in which I am kept, compels me to address you.

I had the honour of waiting on Colonel Wynyard this day, to inform him that all my witnesses for my Court Martial were arrived in town, and to state that, to my great surprise, I found that Major Gordon had not given in his list of witnesses to the Judge Advocate General, although ordered so to do above a fortnight ago.

I now find from Colonel Wynyard, that Major Gordon has stated, that the presence of Sir Thomas Trigge, now at Gibraltar, is essentially necessary on his part. This proceeding, I am convinced, is merely calculated to create delay, and after what I have already suffered, I trust that your Royal Highness will not permit the assembly of the General Court Martial being longer deferred. It appears to me, that if Major Gordon thought the presence of Sir Thomas Trigge essentially necessary, he might have stated that circumstance many months ago.

I beg leave to recal to your Royal Highness's recollection, that when ordered by you to bring Major Gordon to an immediate Court Martial in this country, I stated that most of the documents and witnesses were in the West-Indies, and that I did not conceive that the Court Martial could assemble, with effect, in this country; nay, farther, your Royal Highness ordered me to withdraw one charge, and that a very strong one, against Major Gordon, as it was conceived that he would require witnesses for his defence against it, from a distance.

I trust, therefore, that the same measure of justice will be dealt out to me; at all events, that your Royal Highness will call upon Major Gordon, to state what he means to prove by the testimony of Sir Thomas Trigge, as pro-

bably he may receive by my admission, all that he could gain by that officer's presence.

I earnesly entreat your Royal Highness's early attention to my request; as really the state of suspence under which I have so long laboured, and the anxiety of my family for my situation, added to the injury which my private fortune has already suffered, are almost too much for me to support.

I have the honour to remain, with sentiments of the utmost respect,

Your Royal Highness's
Most obedient,
And most humble Servant,
(Signed) A. COCHRANE JOHNSTONE.

From Colonel Wynyard, Deputy Adjutant General, To the Honourable Colonel Cochrane Johnstone.

Horse-Guards, July 26, 1804.

SIR,

I have the honour to enclose to you herewith, a copy of the charges exhibited against you by Major Gordon, on the half-pay of the late 8th West-India Regiment; the originals of which have been transmitted to the Right Honourable the Secretary at War, for the purpose of being inserted in a warrant for his Majesty's signature.

I have the honour to be, &c.
(Signed) W. WYNYARD.
D. A. G.

The Charges mentioned in the above Letter, are printed in the right hand Column below, and the Charges formerly exhibited by Major Gordon, are printed in the Column on the left hand, for the more easy comparing of the two Editions of the Major's assertions.

FIRST EDITION,

ENTITLED,

" Statement of Facts, on which, to ground specific Charges against Colonel Cochrane Johnstone, of the late 8th West-India Regiment, and late Brigadier General, commanding his Majesty's Troops in Dominica."

FIRST CHARGE.

Having, contrary to his duty, and to the great injury of the Service, in or about the month of October, 1801, when he knew that the accounts of the Regiment were in confusion, clandestinely, *under false pretences*, obtained for his own use, from Richard Seward, Pay-Master of the 8th West-India Regiment, by bill drawn upon the Agent, and by him charged *to the Public*, the sum of Five Hundred Pounds Sterling, being money due by Government to the corps—whereby the Pay-Master was deprived of the means of satisfying the just demands of

SECOND EDITION,

ENTITLED,

" Charges against Colonel Cochrane Johnstone, of the late 8th West-India Regiment, and late Brigadier General, commanding his Majesty's Troops in Dominica,"

FIRST CHARGE.

Having, contrary to his duty, and to the great injury of the Service, in or about the month of October, 1801, when he knew that the accounts of the Regiment were in confusion, clandestinely obtained for his own use, from Richard Seward, Pay-Master of the 8th West-India Regiment, by bill drawn upon the Agent of the corps, and by him charged *to the Pay-Master's Regimental Account*, the sum of Five Hundred Pounds Sterling, being money due by Government to the corps, under the false pretence *that he would write to the Agent*

FIRST EDITION.

the Regiment, the accounts of the men were *unpaid, and discontent was excited* in the corps: And having, in or about the months of March or April, 1802, when he knew that *the accounts of the Regiment were in disorder,* and that the Pay-Master was much in arrear to the corps, directed, under false pretences, above One Hundred and Forty Pounds Sterling to be stopped from the Pay-Master, out of the subsistence of the Regiment, *for his own use,* contrary to his duty, and to the injury of the Regiment, and the Service.

SECOND EDITION.

immediately to place the same to his own private account, and that it should not, in any manner, affect the accounts or credit of the Pay-Master, with the Agent or Public: And having afterwards *falsely promised to the Commanding Officer* to transfer his pay, as Colonel, to the Pay-Master, to liquidate the above sum of Five Hundred Pounds, none of which engagements he performed; whereby the confusion of the accounts was encreased, and the Pay-Master was deprived of *the means of regularly paying* the Regiment, the accounts of the men were *unsettled,* and, *as would appear,* discontent was excited in the corps.

And having, in or about the month of March or April, 1802, when he knew that *the Pay-Master was in arrear* to the Regiment, directed above One Hundred and Forty Pounds, to be stopped from the Pay-Master, out of the subsistence due to the Regiment, under *the false pretence, that the same was justly due to him,* whereby *the difficulty of paying the Regiment was encreased,* contrary to his duty, and to the injury of the Regiment and Service.

FIRST EDITION.

SECOND CHARGE.

Having, contrary to his duty, and to the prejudice of the Service, at times between the month of July, 1801, and the end of April, 1802, suffered the Resident Pay-Masters, who were his Secretaries, to withhold or retain, under *false pretences,* a part of the subsistence of the troops, whereby payments to Regiments were rendered partial and irregular: And in particular, having, *with his knowledge, unwarrantably* suffered Resident Pay-Master, Charles Kerr, who was his Secretary, to retain in his hands, *under false pretences,* in the month of March and April, 1802, immediately preceding the mutiny in the 8th West-India Regiment, sums of money due on account of subsistence to that corps, to the amount of *One Thousand Pounds Sterling,* being about two months pay of the Regiment, whereby the balances of the men *remained unavoidably unpaid,* and discontent and mutiny were excited in the corps: And it would appear, that Colonel Cochrane Johnstone had an interest in withholding the money, by his asserting, both verbally and in writing, a direct

SECOND EDITION.

SECOND CHARGE.

Having, contrary to his duty, and to the prejudice of the Service, at times, between the month of July, 1801, and the end of April, 1802, suffered the Resident Pay-Masters, who were his Secretaries, *unwarrantably* to retain, *or to neglect to issue regularly, and agreeable to General Orders,* a part of the subsistence of the troops, *under pretence that the same was not received from the Deputy Pay-Master General*— And in particular, having suffered Resident Pay-Master Charles Kerr, who was his Secretary, to retain, or *unwarrantably* to *neglect to issue,* under the above false pretence, in the months of March and April, 1802, immediately preceding the mutiny of the 8th West-India Regiment, sums of money due on account of subsistence to that corps, to the amount of *about* One Thousand Pounds Sterling, being nearly equal to two months pay of the Regiment; whereby the men's balances were unpaid, and, *as would appear,* discontent and mutiny were excited among them. It further appears, that Colonel Cochrane Johnstone assert-

FIRST EDITION.

falsehood in vindication of Mr Kerr's conduct.

THIRD CHARGE.

Having employed, or directed to employ, *the soldiers* of the 8th West-India Regiment, in manual labour, on his own lands, or on other works, *for his advantage*, and neither paid nor directed them to be paid for their labour, contrary to his duty, and to the prejudice of the service. In particular, having repeatedly so employed, and not paid for their labour, *the whole*, or a considerable part of a detachment of recruits belonging to the 8th West-India Regiment, consisting of about *eighty men*, quartered at Roseau, the residence of Col. Cochrane Johnstone, between the month of January, and the end of July 1801; and although under his immediate inspection, during the whole of that period, having totally neglected to have them instructed and trained to discipline, as his duty and the good of the service required.

SECOND EDITION.

ed, both in word and writing, a falsehood unbecoming his rank, and the character of an officer, to vindicate Mr Kerr's conduct, in not issuing the money due the Regiment.

THIRD CHARGE.

Having employed, or directed to employ, soldiers of the 8th West-India Regiment, in manual labour on his own lands, and on other works, and neither paid, nor directed them to be paid for their labour, contrary to his duty, and to the injury of the service. In particular, having repeatedly so employed and not paid for their labour, a considerable part of a detachment of recruits, belonging to the 8th West-India Regiment, consisting of about *seventy* or eighty men, while quartered at Roseau, the residence of Colonel Cochrane Johnstone, for some months, *immediately preceding the month of September*, 1801; and having, although under his immediate inspection, totally neglected to have them instructed and trained to discipline, as his duty, and the good of the service, required.

FIRST EDITION.

And having, in the months of March and April, 1802, immediately preceding the mutiny of the 8th West India Regiment, directed the Regiment to be employed in cutting wood, and clearing some swampy ground, in the neighbourhood of Prince Rupert's, in the Island of Dominica, *with a view to convert the same to his own use;* and having neither paid the men, nor directed them to be paid for their labour, *whereby, discontent and mutiny were excited in the Regiment.*

FOURTH CHARGE.

Having repeatedly, between the months of August, 1801, and the end of July, 1802, in direct opposition to his duty, availed himself of his military power and authority, to violate the laws of his country, and infringe the rights and liberty of the subject; and in particular, having, in violation of the laws and the rights of the subject, on or about the 14th day of December, 1801, illegally caused to be arrested, with an armed military detachment, James Ryrie, a

SECOND EDITION.

And having, in the months of March and April, 1802, immediately preceding the mutiny of the 8th West-India Regiment, directed the Regiment to be employed in cutting wood, and clearing some swampy ground, in the neighbourhood of Prince Rupert's, in the Island of Dominica, with the view *(as would appear)* to convert the same to his own use; and having neither paid the men, nor directed them to be paid for their labour, to the great injury of the service, as *thereby it appears*, discontent and mutiny were excited in the Regiment.

FOURTH CHARGE.

Having, in direct opposition to his duty, as Commanding Officer of the troops in Dominica, availed himself of his military power, to violate the laws, and to infringe the rights and liberty of the subject, between the month of August, 1801, and the end of July, 1802. In particular, having, in violation of law, and of the rights of the subject, on or about the 14th day of December, 1801, caused James Ryrie, a civil inhabitant of the Island of Dominique, to be illegally

FIRST EDITION.

civil inhabitant of the Island of Dominica, and confined him in a Military Fort, and Guard House; and, *in aggravation of this offence*, having suffered the said James Ryrie, *with his knowledge*, to be *assaulted*, insulted *cruelly*, beat, and maltreated, by persons under his immediate influence and command, without taking *any* steps to prevent the same, or to discover and bring to justice the authors of such *enormities*, or the persons who employed them.

And having, on or about the 22d day of July, 1802, been *further guilty of abusing his military power*, and of violating the laws and the liberty of the subject, by authorising, or permitting his own menial servant, in his presence, to insult, and threaten with a pistol, Mr Etienne La Caze, formerly a Lieutenant in Loyal Dominica Regiment, and then residing in the Island; and to drag forcibly the said Etienne La Caze to Fort Young, immediately adjoining the residence of Col. Cochrane Johnstone, and illegally to deliver him a prisoner to the guard, and to have him confined, and a centinel, with a drawn bayonet, placed over him.

SECOND EDITION.

arrested by an armed military detachment, and to be confined in a Military Fort and Guard House; and having suffered the said James Ryrie to be insulted, beaten, and maltreated by persons under his immediate influence and command, without taking steps to prevent the same, or to discover and bring to justice the authors of such outrages, or the person or persons who employed them.

And having farther, in opposition to his duty, as Commanding Officer, as aforesaid, and in violation of the laws and liberty of the subject, on or about the month of July, 1802, authorised, or permitted his own menial servant, in his presence, to insult and threaten with a pistol, Mr Etienne La Caze, residing in the Island of Dominica, and formerly a Lieutenant in Loyal Dominica Regiment, and authorising or permitting his said servant forcibly to drag the said Etienne La Caze to Fort Young, and to deliver him illegally to the guard, and to have him there confined, and a centinel, with a drawn bayonet, placed over him.

These instances affording

FIRST EDITION.	SECOND EDITION.
These instances affording a glaring proof of the abuse of military power, and conduct unbecoming an officer and gentleman.	proof of abuse of military authority, and of conduct unbecoming an officer and gentleman.

From the Hon. Colonel Cochrane Johnstone,
To Brigadier General Wynyard, Deputy Adjutant General.

67, *Harley-Street, July* 27, 1804.

SIR,

I had the honour of receiving last night your letter, dated 26th instant, enclosing a copy of the charges exhibited against me by Major Gordon, and informing me, that the originals thereof have been transmitted to the Right Honourable the Secretary at War, for the purpose of being inserted in a warrant for his Majesty's signature.

I think it necessary to lose no time in acknowledging the receipt of these charges, and at the same time of taking notice that they differ in several points, and in my apprehension *very material ones,* from the first edition of them exhibited by Major Gordon, and of which the Adjutant General did me the honour to transmit a copy.

As I may have occasion to found upon these variations in the course of the trial, I hope you have preserved *both originals*; and I have only to add, that I trust the Court-Martial for my trial will be assembled without further delay.

I have the honour to be, &c.
(Signed) A. COCHRANE JOHNSTONE.

From the Right Hon. Sir Charles Morgan, Bart. Judge Advocate General,
To the Hon. Colonel Cochrane Johnstone.

Judge Advocate General's Office, July 27, 1804.

SIR,

I have the honour to acknowledge the receipt of your letter of the 25th instant, with a list of persons whom you wish to be summoned as witnesses upon your trial; and have to acquaint you, that I have but just been informed that a special warrant is prepared for His Majesty's signature, appointing a General Court-Martial for your trial, upon charges preferred against you by Major Gordon; of which, for the sake of dispatch, I should have obtained a copy, and transmitted the same to you, had I not been informed that you have been furnished with the same from the Adjutant General's Office. As soon as the warrant, under the sign manual, shall be transmitted to me, no time will be lost in convening the Court-Martial, and I will take care to apprise the several witnesses whom you have named, that their attendance will be necessary.

I have the honour to be, &c.
(Signed) CHARLES MORGAN.

From Major General Calvert, Adjutant General,
To the Honourable Colonel Cochrane Johnstone.

Horse Guards, July 26, 1804.

SIR,

I am directed by the Commander in Chief, to acknowledge the receipt of your letter to His Royal Highness, of the 24th instant; and in reply to observe to you, that the delay which has attended the appointment of a General Court Martial for the investigation of your conduct in the West-Indies, of which you have so repeatedly complained, has originated not from His Royal High-

ness, but from the circumstances of the case, which rendered it indispensibly necessary, that the charges exhibited by you against Major Gordon, should be disposed of before he could be called upon as prosecutor, to prefer charges of accusation against you.

No time was lost after the sentence of the General Court-Martial on Major Gordon was declared, in calling on that officer to state the charges he intended to prefer against you; a copy of which was immediately transmitted to you, by his Royal Highness's command; and with as little delay, was Major Gordon desired to state the witnesses he meant to call upon in the prosecution. When the Commander in Chief perceived General Sir Thomas Trigge's evidence was considered necessary, he ordered that Major Gordon should be desired to state the particular points on which it was his intention to require Sir Thomas's evidence, in order that his Royal Highness might judge whether his attendance at the ensuing Court-Martial could be dispensed with: This Major Gordon has complied with, and has proved to his Royal Highness's satisfaction, that Sir Thomas Trigge's evidence will be indispensibly necessary; consequently his Royal Highness, however much he laments this additional delay, does not feel himself at liberty to recommend to his Majesty the assembling the Court-Martial, until the arrival of that General Officer in England.

Although it is not usual to give information to the opposite party of the particular points, on which an evidence is expected to speak, his Royal Highness feels so strong an inclination to afford every information in his power, that he has been pleased to command a copy of Major Gordon's letter on this subject to be transmitted to you, which I have accordingly the honour of enclosing.

I have the honour to be, &c.

(Signed) HENRY CALVERT.
A. G.

(Copy Letter enclosed.)

From Major Gordon, of the late 8th West India Regiment,
To Brigadier General Wynyard, Deputy Adjutant General.

No. 12, New Peter-Street, Westminster, July 24, 1804.

SIR,

In reply to that part of your letter of 17th instant, in which you recommend me to state, for the information of His Royal Highness the Commander in Chief, "what are the points which I expect to establish "by the testimony of Sir Thomas Trigge, on the trial of "Colonel Cochrane Johnstone,"—I have the honour to submit, independent of other circumstances, that, by the evidence of General Trigge, as well as by the correspondence of Colonel Cochrane Johnstone with the General, and his Secretary, Lieutenant Colonel Darling, both prior and subsequent to the mutiny of the late 8th West India Regiment, touching draining the swamp at Prince Rupert's, &c. I have every reason to believe, that, not only the fact, of the men of that Regiment having been ordered by Colonel, then Brigadier General Cochrane Johnstone, to be employed in that work, and neither paid, nor directed to be paid for their labour, which it would appear, led to such fatal consequences, will be completely established, but also, that his interested motives in directing them to be so employed, will be placed in a clear point of view.

I have the honour to be, &c.

(Signed) JOHN GORDON,
Major late 8th W. I. Regt.

From the Hon. Colonel Cochrane Johnstone,
To Major General Calvert, Adjutant General.

67, *Harley-Street, July 28, 1804.*

SIR,

I had the honour last night of receiving your letter of the 26th instant, acquainting me, that Major Gordon "has proved, to His Royal Highness's satisfaction, "that Sir Thomas Trigge's evidence will be indispensibly

" necessary; consequently His Royal Highness, however " much he laments this additional delay, does not feel " himself at liberty to recommend to His Majesty the as- " sembling the Court-Martial, until the arrival of that " General Officer in England."

I take the liberty of requesting, that you will have the goodness to express my humble thanks to His Royal Highness for this communication of his resolution, and of the grounds on which it is founded, as contained in the copy sent me of Major Gordon's letter addressed to the Deputy Adjutant General.

Having already so fully, and, I am sorry to add, so frequently, explained to His Royal Highness, the extreme severity of my sufferings from the protraction of this business, I can have no occasion to say a word upon my present mortification; and while I cannot help feeling the pressure of complicated hardships, I know my duty too well to hesitate in acquiescing with respectful submission, to the determination of His Royal Highness.

Having said thus much, I trust my intention will not be misunderstood, in making an observation upon the ostensible grounds of calling for the evidence of Sir Thomas Trigge, as expressed in Major Gordon's letter, viz. " That " by the testimony of that Officer, and my correspondence " with him and his Secretary, Major Gordon has every rea- " son to believe, that, not only the fact that the men of that " (my) Regiment, having been ordered by Colonel, then " Brigadier General Cochrane Johnstone, to be employed " in that work, (draining the Swamp at Prince Rupert's) " and neither paid, nor directed to be paid for their " labour, which, *it would appear*, led to such fatal conse- " quences, will be completely established, but also, that his " interested motives in directing them to be so employed, " will be placed in a clear point of view."

In the first place, I must remark, that whatever order I gave respecting the work in question, actually is, or ought to be, in Major Gordon's possession, and he would have the aditional benefit of his oath to support such written evidence, and which would entirely supersede the necessity of any farther evidence whatever on that head. The remark now made, applies with equal force to any direction

issued by me, as to the payment of the men employed in the work.

In the next place, it must be extremely obvious, that neither the testimony of General Trigge, nor that of Major Gordon himself, nor of any other person whatever, can be required to establish the negative of the men not having been paid.

Major Gordon cannot be ignorant, that if he chooses to found upon that circumstance, he has only to *assert*, that the men were not *paid*; and if I wish to refute his assertion, it will be incumbent upon *me* to prove the fact, that the men *were paid.*

With regard to the vague imputation of interested *motives*, surely no witness would be permitted judicially to give his *opinion* or *suspicion* in evidence, and no testimony could go farther.

From the facts established by evidence, *and from these only*, in this case; from the nature of the work, and from the orders issued, the Court may, and will draw such conclusions respecting the motives of my conduct, as their own judgments will suggest; and as I have humbly taken the liberty to observe, these facts can be completely proved, independently altogether of the evidence of Sir Thomas Trigge.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE,

From the Hon. Colonel Cochrane Johnstone,
To Major General Calvert, Adjutant-General.

67, *Harley-Street, July 30th,* 1804.

SIR,

In case that Major Gordon has lost the order, which I issued to him for employing a detachment of the late 8th West-India Regiment, in cutting the brush-wood at Prince Rupert's, I can have no hesitation in *avowing, that I gave such order to Major Gordon, and that the men were not paid.*

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

From Brigadier General Wynyard, Deputy Adjutant General, To the Hon. Colonel Cochrane Johnstone.

Horse Guards, August 2, 1804.

SIR,

I have communicated to Major Gordon the contents of your letter of the 30th ultimo, and have now the honour to inform you, that *the Major is of opinion,* that the presence of Lieutenant General Sir Thomas Trigge is necessary as an evidence to substantiate a part of the charges that Officer has exhibited against you, which, *of course,* cannot now go to trial, till the arrival of Sir Thomas from Gibraltar.

I have the honour to be, &c.

(Signed) W. WYNYARD,
D. A. G.

From the Rt. Hon. Sir Charles Morgan, Bart. Judge Advocate General, To the Hon. Colonel Cochrane Johnstone.

Downing-Street, August 3, 1804.

SIR,

Having just now learnt from the Adjutant General's Office, that, upon *a statement from Major Gordon,* the evidence of Lieutenant General Sir Thomas Trigge will be essential for substantiating a part of the charges preferred against you, it is determined, that the proposed trial must be postponed till the arrival of Sir Thomas from Gibraltar. I presume it will be unnecessary for me, at present, to issue any summons to the witnesses, whose names you did me the honour, some little time ago, to transmit to me.

I have the honour to be, &c.

(Signed) CHARLES MORGAN.

From the Hon. Colonel Cochrane Johnstone,
To the Right Hon. Sir Charles Morgan, Bart. Judge Advocate General.

67, *Harley-Street, August* 4, 1804.

Sir,

I had the honour of receiving last night your letter of the 3d instant; in answer to which, I can only say, that although the immediate attendance of my witnesses in town would be unnecessary, yet, in order to prevent their engaging in Foreign Service, or otherways going into situations, from which it may be difficult or impossible to recal them when the Court-Martial shall be assembled, it may be essentially requisite, that summonses from your Office, should be served upon them without delay, but qualified in such a manner as you shall think proper, to save, as far as possible, any unnecessary inconvenience to the different persons alluded to.

I have the honour to be, &c.

(Signed) A. Cochrane Johnstone.

From the Right Hon. Sir Charles Morgan, Bart. Judge Advocate General,
To the Honourable Colonel Cochrane Johnstone.

Downing-Street, August 6, 1804.

Sir,

In compliance with your desire expressed in your letter, which I received late on Saturday evening, I shall give an intimation to the several persons, whom you have mentioned as witnesses necessary towards your defence, that their testimony will be required when the trial takes place, and that I shall give them the earliest notice in my power, which is all, in the present state of the business, I consider it is competent for me to do.

I have the honour to be, &c.

(Signed) Charles Morgan.

From the Hon. Colonel Cochrane Johnstone,
To Brigadier General Wynyard, Deputy Adjutant General.

67, *Harley-Street, August* 7, 1804.

SIR,

I had the honour of receiving from the Adjutant General, a letter of the 26th ult. with a copy of a letter from Major Gordon, stating *the facts* he meant to establish by the evidence of Sir Thomas Trigge; and which *facts* were considered by the the Commander in Chief to be sufficient grounds for delaying the trial of the Major's charges against me, till the arrival of that Officer in this country. In my answers to that letter, I explicitly *admitted* the facts alluded to, whereby farther evidence thereof was rendered unnecessary, and every pretext suggested for the additional delay of my trial was completely removed.

I have now the honour to acknowledge the receipt of your letter, dated 2d instant, mentioning *your having communicated those admissions to Major Gordon, with the Major's opinion, not founded on any fact,* that the evidence of Sir Thomas Trigge is necessary to substantiate a part of his charges, which, *of course,* cannot now go to trial, till the arrival of Sir Thomas from Gibraltar.

I have the honour to be, &c.

(Signed) A. C. JOHNSTONE.

TO

HIS ROYAL HIGHNESS

THE DUKE OF YORK,

COMMANDER IN CHIEF.

SIR,

I have the honour to acknowledge the receipt of your Royal Highness's letter of the 16th instant*, acquainting me, that you had, in conformity to my request, laid the resignation of my commission, as Colonel, at His Majesty's feet, and that His Majesty has been graciously pleased to accept the same.

Permit me to return my sincere thanks to Your Royal Highness for this communication, by which I am released from the irksome state of suspense in which I have so long been held, and am, at the close of twenty-three years highly perilous, laborious, and zealous service of my King and country, suffered to breathe in the repose and obscurity of a private station.

Unconscious of a wish to undervalue my lot, which, on comparison with the immediately precedent period of my life, may be deemed a happy one, I find it impossible to repress an anxiety to know, and to make known to my friends, and to the world, the true grounds and reasons, why the measure of my remuneration and reward, as a veteran servant of the Crown, should have been ultimately apportioned on a scale so peculiar, and so little resembling the accustomed munificence of the British Sovereign.

* See page 170.

To military men, especially, an enquiry of this nature must be interesting; for, what is my case to-day, may be that of any one, or of any number, of my late brother-officers to morrow. In truth, the subject, from its great importance, and the extensive consequences to which it leads, is one with which not only every officer in His Majesty's service, but every member of the community, stands deeply connected. To the most serious attention of Your Royal Highness, in your exalted military situation, it has a paramount claim.

In this country of boasted freedom, fruitful in a thinking, discerning, and enlightened people, united in society under the salutary regulations of a wise and equitable jurisprudence, where the lowest person is not beneath the protection, nor the highest above the reach of the laws, the fate of every individual is an object of consideration to the community. The same rights, founded in natural justice, are enjoyed in common by the whole members of the society; the same laws, guard them; and an act of oppression or injustice to an individual member is nothing short of an attack upon the body, by violating those laws, upon the inviolate preservation of which the general welfare and safety depend.

I trust, therefore, that every honest well-wisher of his country, and every sincere friend of humanity and justice, will accord with my desire of making the inquiry above suggested. If, in the result of that inquiry, a clear discovery shall be made, that my conduct and services have been duly estimated and recompensed, and that the public proceedings held in order to form that estimate, are justifiable upon the principles of our revered constitution, and of our no less sacred system of criminal law, I shall rest satisfied; and every good subject will rejoice. If, on the contrary, it shall appear, that I have been harshly, unjustly, and cruelly treated;—if it shall be found, that something like a concerted scheme has been formed, for causes yet insufficiently explored, and by persons not yet fully detected, to sacrifice me as the devoted victim of prejudice, malice, and revenge; that, in the means employed to accomplish that scheme, the greatest enormities have been committed; that calumnies and perjuries,

resorted to for that purpose, have been suffered to pass unpunished and unnoticed; while a most daring and dangerous *innovation*, in the same spirit of hostility, has been practised in an official department—an innovation, which tends directly to the subversion of the established system of military law; and which, though itself a *punishable offence against law*, has been made *the sole avowed ground in law* for my punishment: I say, if things of that nature shall be discovered in the course of the proposed investigation, it is scarcely to be doubted, that, whatever success my personal claims for justice may have, there is not an impartial man in the kingdom, who will not applaud my endeavours to bring to light truths of such magnitude, and of such extensive public concern.

In the short, but singularly chequered interval of my life, which has elapsed since the commencement of my correspondence with the department of Your Royal Highness*, the first remarkable occurrence with which you stand immediately connected, is the omission of my name, by your command, in the brevet promotion of Major Generals, published in the London Gazette of 1st October, 1803. Having received no explanation of the reasons for this measure of severity, I preferred a request for an investigation into my conduct, in the persuasion that it could not be meant to inflict a punishment upon an innocent person†. At the distance of nine weeks from the date of my memorial containing that request, Your Royal Highness honoured me with an answer, *10th December*, 1803, in which you stated, that, as I had exhibited charges against Major Gordon, you did not see the possibility of taking any steps respecting the investigation of my conduct, until the Major's trial was disposed of. In regard to my promotion to the rank of Major General, you observed, that it was an invariable rule of the service, not to include in any general brevet promotion, an officer, (whatever may be his rank) against whom

* September 9, 1803.

† October 4, 1803. See Correspondence, pages xli, &c.

there exist *charges*, the merit of which has not been decided.

With relation to the *first* part of that letter, I must confess, with the greatest deference to Your Royal Highness, that I could not perceive the necessity of postponing the investigation of my conduct, till the conclusion of Major Gordon's trial. And you will imagine my surprise at the allusion, in the *second* part, to existing *charges* against me, of which I had never till then received any intimation, nor heard from any quarter the slightest surmise. Many earnest inquiries followed on my part, to learn the nature and purport of the charges alluded to; but I was unable to obtain an answer, or the least satisfaction on that head, till the *28th of May*, 1804*, when I received a letter from Colonel Clinton, then Secretary to Your Royal Highness, stating, in explanation of your letter of *10th December* preceding, that Major Gordon having from time to time *transmitted letters*, and *verbally made general accusations*, highly affecting my character as an officer, whilst the 8th West-India regiment was under my command at Dominica, Your Royal Highness felt it incumbent upon you, as soon as the proceedings against Major Gordon *had been concluded*, to *call upon that officer* to state, whether *he meant* to bring forward any specific charges against me.

Thus, at last, I was given to understand, by command of Your Royal Highness, that by *charges*, said in your letter of 10th December, 1803, to *exist* against me, in consequence of which, you had, in compliance with *an invariable rule of the service*, with-held my rank, nothing more was meant than certain calumnious reports, clandestinely conveyed to Your Royal Highness by Major Gordon, and upon which it was not known so late as the 28th of May, 1804, whether the Major intended to found any charges against me, or not.

The personal satisfaction and relief which that communication might be supposed to afford me, suffered no small abatement by some uneasy reflections to which it

* See Correspondence, page lxxvii.

gave rise. I own, it was in vain that I tried to discover on what principle in justice, in expediency, or in good policy, the *invariable rule of the service*, acted upon by Your Royal Highness, as above, was founded. The defamatory reports were made by a *Major* against his *Colonel*. They were not in any respect substantiated—they might possibly be false; they were totally unknown to the party accused—the accuser had not undertaken to make good his words, or to bring forward any accusation which he durst publicly avow—he had merely acted the part of an assassin, making stabs in the dark, and wearing a mask in the light*. In these circumstances, I could not help thinking, that the chance was not greater, that the superior officer deserved to be deprived of his rank for public misconduct, than that the inferior officer deserved the like punishment for secret calumny. And it was impossible, without extreme reluctance, to entertain a belief one moment, that, in the constitution of the British army, in the established code of military law, under the reign of a gracious Prince, in the year of the Christian æra 1805, so barbarous a principle could be recognized, as that bare accusation, without inquiry into its truth or falsehood, and never communicated to the accused party, should be held a legitimate warrant for condemnation and punishment, without trial.

If Your Royal Highness had been pleased to apprise me of the injurious reports and letters in your possession, prior to October, 1803, I should at least have had an opportunity of answering for myself, and might happily have succeeded in vindicating my conduct. At the worst, I would have opposed, to the unvouched accusations of my adversary, my own positive protestations of innocence, accompanied with express offers to bring complete proof in exculpation. Here, there would have been fair ground, supposing the opposite assertions entitled to equal credit, for suspending judgment till the investigation and evidence was closed; and this conclusion will not be weakened by the consideration, that the latent accuser, before

* See Defence, page 7.

transmitting a single article of his libellous reports, was in the full knowledge of most serious charges having been regularly prepared by me, to be exhibited against him before a General Court Martial in the West Indies, which he ignominiously eluded, as stated in my official dispatches in autumn 1802. Accordingly, the fourth article of my accusation of Major Gordon, lodged in the department of Your Royal Highness, five weeks antecedent to your letter of 10th December, 1803, charges him, pointedly and explicitly, with having absconded and fled from justice *.

To what, or whether to any degree of credit the assertions made by a person, under such conviction of conscious guilt, in his own behalf, are entitled, it is immaterial to inquire. All I desire to contend for, is, that they ought not to be held sufficient grounds of themselves for ordering immediate *execution*, or forfeiture of the fame, rank, and fortune of any officer, howsoever spotless may be his character, howsoever irreproachable his conduct, and howsoever illustrious his public services. For the sake of the profession to which, from an early period of my life, I have had the happiness to belong; for the honour of the British name; for the reputation of that salutary and wise system of law and liberty, which enabled our ancestors to acquire, and which qualifies their descendants to maintain, their splendid distinction in the rank of nations, I fondly flatter myself, that, in this instance, Your Royal Highness has mistaken the application of the invariable rule you mention; and that, on farther consideration, you will be agreeably convinced, that the military code of England contains no maxim authorising an inversion of the order of justice, by inflicting *punishment* upon an officer, *before* either sentence, conviction, proof, trial, or regular accusation.

The trial of Major Gordon, upon the charges preferred by me, was at last allowed to proceed on the 30th of January, 1804; and he came to the bar with the advantage of being prosecuted by an officer, apparently in the situation of a convicted criminal, under punishment at the time,

* Correspondence, page 1.

by suspension of his rank. That prisoner had the farther advantage of being arraigned, not upon my charges as originally given in to the department of Your Royal Highness, but as there modified, with the assistance of Mr Oldham, (who ought not then to have known what they were) and with that most material charge *of the prisoner having absconded*, in order to escape from justice, and having *behaved with insolence and disrespect to his Colonel*, being *entirely left out* *. In consequence of this, I was of course precluded from bringing forward evidence to substantiate the facts charged under that article; and Major Gordon then availed himself of his security from contradiction, by a stout denial of the whole of that charge.

The matter of the charges, as ultimately allowed to be inserted in His Majesty's warrant, was, however, abundantly weighty; but being wholly relative to the service of the line, and more particularly to the duties of service in the West Indies, the tendency and bearings of the various circumstances produced in evidence, were not so well adapted to impress the Members of the General Court Martial, who, with the exception of the Right Honourable President, Lieutenant-General Fox, being composed of most respectable officers of the Life and Foot Guards, could have few, if any, opportunities of knowing personally the business or subject of the charges. The tenor of their sentence accordingly is peculiar; but, in fair construction, it plainly enough finds the prisoner guilty on every article of accusation, though not to the full extent charged †.

The most remarkable incident in the course of the trial, was, that the prisoner's principal witness, in repeated instances, committed flagrant acts of perjury, publicly marked by different members of the Court at the time.

In respect to my own conduct and demeanour in the several stages of the business, I had every reason to believe, that I had the good fortune to stand well in the opinion of the Court; and I should not have mentioned this,

* See Correspondence, pages lv, lvi, &c.

† See Correspondence, pages lxxxvi, lxxxvii, &c.

had it not been for the concluding paragraph of the Judge Advocate's letter to Your Royal Highness, containing a copy of the sentence of that Court Martial, in which he thinks fit, in His Majesty's name, to pass a violent censure upon the manner in which I am supposed to have conducted myself during the trial. Strongly as I felt this injury, I considered it to be improper for me then to take such notice of it as I should otherways have done, being at the time under military arrest, and preparing for my own Court Martial. But I immediately communicated, by letter to the Judge Advocate General, my sentiments upon the proceeding.

On the evening of the 21st of June, 1804, I received from the Adjutant General a letter of the 20th, inclosing a copy of a "Statement of Facts," transmitted to him by Major Gordon, on which to ground specific charges against me*. The only article of these to which I shall have occasion to call the attention of Your Royal Highness, is that which forms the THIRD CHARGE; in the first part of which I am accused of having employed a detachment of recruits belonging to my regiment, in manual labour, on my own lands, "between the month of *January*, and the "*end of July*, 1801." This part of the charge, as afterwards altered, and finally inserted in His Majesty's warrant, on which I was tried, Your Royal Highness will be pleased particularly to remark, accuses me of having employed the said detachment of recruits in manual labour, on my own lands, "for some months *immediately preced-* "*ing* the month of *September*, 1801." It is material to keep this variation in mind, in order to form a true judgement upon a very important branch of the subject of this letter. And it may be here marked as intimately connected with the discussion of the same subject, that His Majesty's warrant for assembling my Court Martial, was issued on the 10th August, 1804, nearly two months after Major Gordon's "Statement of Facts" was transmitted to the Adjutant-General.

It is likewise highly essential to keep in view the con-

* See Correspondence, page lxxx to lxxxiii.

cluding part of the same charge, which, as ultimately adjusted and tried, is in these words: "And having, in the "months of March and April, 1802, and immediately "preceding the mutiny of the 8th West India regi- "ment, directed the regiment to be employed in cutting "wood, and clearing some swampy ground in the neigh- "bourhood of Prince Rupert's, in the island of Dominica, "*with the view* (as would appear) *to convert the same to his* "*own use;* and having *neither paid the men, nor directed* "*them to be paid for their labour,* to the great injury of "the service; as thereby it appears *discontent and mutiny* "*were excited* in the regiment."

After various proceedings detailed in the correspondence formerly published, and in subsequent pages of the present publication; the first of March last, was at length announced as the day on which the General Court Martial for my trial should assemble. And here I shall beg leave to stop a few moments, to take a review of the circumstances under which that trial commenced.

My prosecutor was the very person previously tried at my suit before a General Court Martial, who, by their sentence, notwithstanding an obstinate defence, partly supported by perjury, pronounced his conduct irregular, culpably negligent, and censurable. But though a full year, and more, had passed away since that sentence, neither the convicted party, nor his perjured witness, had experienced any manner of inconvenience from it, which seemed to have dropt from the mouth of the Court lifeless, and without power of action, or at most to have conveyed to the senses of the culprit, the harmless sound of a hum, where there was no sting.

The same prosecutor came forward in the double capacity of manager and conductor of the prosecution against me, and of a *witness,* to give his testimony on oath in support of himself. Now, of all imaginable objections to a *witness,* the strongest incomparably is that of *malice;* and, from circumstances of no ordinary nature, Your Royal Highness has had the best opportunities of knowing, how far that objection operated as a disqualification of this witness. During a period of uncertain extent previous to my trial, but not less than *two years,* Major Gordon had

indulged in an unbounded licence of most malicious misrepresentations of my character and conduct. And the letters on that subject, which he had the effrontery to address to the department of Your Royal Highness, as far back as Spring 1803, are tolerable specimens of the lengths to which he was capable of pushing his secret and evenomed attacks.

Without anticipating observations to be found in subsequent pages, I shall take the liberty of recalling to the recollection of Your Royal Highness one ground upon which, in his letter to Colonel Clinton of 4th April, 1803, he labours particularly to excite the strongest prejudice against me. I mean his insidious information of my having, after the late peace, married a lady of the island of Guadaloupe; and the false and wicked inference thence drawn by him, that I would, in consequence, abjure my allegiance to my King, and become a subject of the French Government *. Whatever impression this infamous attempt to sap and undermine my fame, and even my character of loyalty to my Sovereign, might make upon the mind of Your Royal Highness, certain it is, that *Major Gordon* had no doubt that the impression was deep and powerful, and that the whole of my misfortunes and sufferings since, are to be ascribed to such impression. The general promotion which followed the date of the letter just alluded to, was that of October, 1803, when the first violent blow was struck at me, as previously mentioned.

* In cases of persecution, few things are so distressing to a feeling mind, as the rude attacks and allusions of vulgar adversaries, directed against the domestic state, or innocent relations of the persecuted. Explanation, extorted in such cases, is pardonable.

The lady alluded to by my accuser, was the only child of the late Baron de Clugny, Governor of Gaudaloupe, representative of one of the most ancient and respectable families in France.

My union with that lady took place at Martinique, in March, 1803, which the ensuing war soon interrupted, and the successful calumnies of my persecutors have since dissolved. (See page 152.) In the number of Mrs Cochrane's collateral relations, I have to reckon the Consort of the present Head of the French Government; a circumstance to which, above all others, I impute most of the rigours and hardships I have suffered.

That Major Gordon considered this measure as the first fruits of his calumnies, there cannot be a doubt; and he appears to have become emboldened by his success, and to have triumphed in it. He indeed confesses, that the measure required *justification*; and in order to justify it, he proposes nothing less, by his letter of 31st May, 1804, than forming a *conspiracy* for the purpose of persecution, in which he hoped to engage Your Royal Highness as a party, or, according to his indecent insinuation, as a brother conspirator, to assist him *with money*; as, says his letter, he doubted not, but that it was the *wish* of Your Royal Highness, that my conduct should be publicly exposed, to *justify* the *very proper measures* of Government, which *had been* taken against me!

With these hidden proceedings, I was totally unacquainted. Nor to the present moment do I know more of what passed, in consequence of the highly indecorous and insulting letter last mentioned, than that a General Officer, high in the favour and confidence of Your Royal Highness, assured me, that you had declined Major Gordon's application for money; and I should have presumed, without such information, that you would have spurned every part of the proposal in his letter. I therefore could not help being surprised and hurt, to hear, even so late as since my trial was closed, that extra-judicial reports, of a tendency somewhat different, continued to be circulated, certainly without truth or probability*.

But though nothing could surpass the malignity of those letters, addressed to the department of Your Royal Highness, yet these are merely an example of the many similar attacks made, in other quarters, during the same period. An egregious instance of these occurred in the course of the trial†. And thus far of the *prosecutor*, and *leading witness* in support of the prosecution.

That Your Royal Highness was seriously impressed to my prejudice by the letters alluded to, I cannot hesitate to believe. The annals of the British army can furnish no instance of a stronger measure taken against

* See note, page 147.

† See pages 121, 122.

an officer, than that which was taken against me on the 1st of October, 1803. The letter of Your Royal Highness, of 10th December that year, expressly grounds that measure upon "existing *charges*;" and the subsequent letter of your secretary, Colonel Clinton, of 28th May, 1804, explains that expression of Your Royal Highness to denote solely Major Gordon's "*letters*, and general verbal "accusations." I have already humbly hinted my regret, that it had not occurred to Your Royal Highness to give me some intimation of the existence of those virulent slanders, before allowing them to take such root in Your Royal breast, as to determine the course of your proceedings with respect to me. Had an opportunity been allowed me of confronting my accuser, or even of knowing that I was accused, all the fatal effects which have ensued, might have been averted. And so little am I disposed to think with Major Gordon, that the mind of Your Royal Highness is in any respect congenial with his, I do most firmly believe, that *my* happiness on proving his accusations false, and establishing my innocence to your satisfaction, would not have been greater than that of Your Royal Highness. But circumstanced as I unfortunately was, under a load of prejudice, by which even the resolutions of Your Royal Highness were swayed, it is natural to suppose, that in consequence, an unfavourable influence might spread itself through different channels.

To what extent that circumstance actually did operate, Your Royal Highness has access, superior to every other person, to know. My source of intelligence was little else than report, always uncertain, frequently erroneous. The information derived from that source, I must confess, distressed and mortified me in the extreme. How could it be otherwise, Sir, when my Royal Master, who had ever been the first object of my most dutiful respect, of my most ardent attachment, and of my most profound veneration, was represented to me as having imbibed a large portion of the prejudice stirred up against me by the secret calumnies already mentioned; and that signs and expressions of displeasure had been manifested from that high quarter, on the eve of my trial, the influence of which could not easily be calculated; in short, that on a general

view of circumstances, a storm was gathering, by which an individual, protected by the shield of innocence alone, could scarcely hope to escape being overwhelmed?

Awful as this crisis was, my resolution and firmness remained unshaken; and I was more particularly and clearly determined, that no unmanly apprehensions for my individual fate should induce me to betray the slightest unsoldierlike suspicion of the incorruptible integrity and honour of my JUDGES, by stating any personal challenge founded on the information I had received. I was not ignorant of what a learned Judge, high in office, in his esteemed Essay on Military Law, repeatedly quoted in the sequel of this publication, lays down in the following words, page 232:—"The members of a Court-Martial cannot "boast the same independence on the Crown, and conse- "quent immunity from influence, as the Judges in the "ordinary courts of law. The officers who compose a "Military Tribunal, are all necessarily dependent for their "preferment on the Crown, and its ministers. They are "even, in some degree, under the influence of their Ge- "neral in Chief; *powerful motives of opinion*, and which "might sometimes lead astray a weaker mind from the "direct path of justice."

These considerations had no influence with me; for howsoever justly and properly they are urged by the honourable and learned Judge, as topics of general observation and admonition, yet such was my confidence in the probity, in the high honour and feeling of the officers selected to form my Court Martial, that I should have as soon suspected my own innocence, as questioned the rectitude of whatever decision they should pronounce.

With regard to persons of a different description, and in a different situation, I considered it to be a duty of prudence to exercise my own judgment as to the common motives and guides of common men's actions. And I think it proper to take notice of one instance of what may be considered as a personal objection originating from me, as the name of Your Royal Highness was introduced in the course of a discussion that took place respecting it. I allude to a letter from Sir Charles Morgan, inserted in the *Introduction*, pages xvii. and xviii. in which he writes to

me: "I received an application from His Royal High-
"ness the Commander in Chief, requesting that the de-
"puty Judge Advocate General, upon account of his ex-
"perience, might officiate at the trial, if I could not un-
"dertake the duty myself." This personal interposition of Your Royal Highness, in the department of the Judge Advocate, previous to my trial, struck me as unusual; and I could ascribe it only to your humane concern for the safety of the prisoner. I was not aware, however, that any purpose of justice could be materially promoted by the aid of what was called the *experience* of Mr Oldham. My opinion, as far as my own observation enables me to judge, is, that an officiating Judge Advocate, who is an honest man, and is capable of reading intelligibly, and of writing legibly, under the directions of the Court, possesses the chief qualifications requisite for the conscientious and salutary discharge of the duties of his office. What more was to be expected from Mr Oldham's experience, I am not curious to know. But it was impossible for me to approve of his suggesting to his constituent, without authority from the Court, or shadow of foundation in fact, a malignant censure of my conduct in the trial of Major Gordon; or of his partiality, supposing him entitled to comment on the proceedings at all, in silently passing over the perjuries in the evidence for the prisoner. I could not possibly imagine that such a mode of acting was dictated by a mind free from prejudice, and under no improper bias. And the circumstances above alluded to, coming afterwards to my knowledge, served to fortify my opinion of the unfitness of that person to officiate as Judge Advocate at my trial. At the same time I was advised that, in justice to my character, as well as to my defence, I ought to summon Mr Oldham, along with some of the members of Major Gordon's Court Martial, as witnesses, to ascertain the true *ground* and *warrant* of the injurious censure. This I did; and I acquainted Mr Oldham with my purpose of doing so, *before* either he was appointed, or I understood it was meant to appoint him to officiate at my trial*. His character of a *witness* was, in my mind,

* See Introduction, pages xvi, xvii.

a fresh bar to his acting as Judge Advocate in the trial. And, in addition to the objections mentioned, there was one, which, I confess, would alone have determined me to resist his nomination; namely, that I was informed of his being agent to several regiments.

The Judge Advocate General very properly prevented any unpleasant discussion of those grounds of challenge, by appointing Mr Daniell, of Lincoln's-Inn, Barrister-at-Law, to officiate as his Deputy on the occasion.

At last the trial proceeded, with every external advantage on the side of the prosecutor. Two general brevet promotions had now taken place since my return to this country, in each of which my seniority, as Colonel, entitled me to the rank of Major General. In each, my name was omitted; and I came to the bar of my Court Martial, to be tried on charges for offences, while actually smarting under punishment inflicted without trial, for these very offences. I was, besides, in effect, remitted to one Court Martial from another with an apparent stigma fixed upon my character. Prejudices were inflamed, and diffused in every direction. Influence was affirmed to be moved against me. And all the circumstances, commonly thought to be least favourable to the fair trial of a prisoner, seemed (with one exception) to be combined at the moment I was arraigned.

The exception to which I allude, was the character of the Court Martial. In the selection of its members, Your Royal Highness completely fulfilled your gracious promise, conveyed to me through the Deputy Adjutant General, July 2, 1804; viz. "That a General Court Martial would "be convened for my trial, composed of officers, whose "rank and services made them eligible for the duty *." The matter of the charges related entirely to the service of the line, and to the duties of that service abroad, or to facts immediately connected therewith. And all the members of the Court Martial having served in regiments of the line, on foreign service, were, by their professional duties and experience, particularly qualified for their ju-

* See Correspondence, page lxxxix.

dicial situation. Their high rank, and higher personal characters, besides, commanded such respect, and inspired such confidence, that on one hand, supposing their sentence to fall in with the existing tide of prejudice, the purity of intention, and soundness of judgment, with which such sentence was dictated, would not have been disputed;—and, on the other hand, their decision, if given for the prisoner, in the face of partial clamour, in spite of extra-judicial calumnies, and even in opposition to such influence as, according to the learned Judge above quoted, "might sometimes lead astray a weaker mind from the "direct path of justice," could not fail to satisfy all parties concerned, and the public at large, of its being the genuine result of conviction, produced by the irresistible force of truth and evidence operating upon candid and ingenuous minds.

Your Royal Highness will do me the justice to recollect, that, on receiving the statement, or draft of Major Gordon's charges, I wrote to the Adjutant-General, June 22, 1804, requesting him to convey to you my earnest supplication, "that no part of the grounds on which Ma-"jor Gordon had proposed to found his charges against "me, should be permitted to be kept back from exami-"nation; but that the whole matter of the statement gi-"ven in by him, might be comprised in His Majesty's "warrant; as I was extremely desirous that every part of "my conduct, whether in my situation, as His Majesty's "Governor of Dominica, or as a Brigadier-General, should "be submitted to the cognizance of a general court-mar-"tial."

In pursuance of the method suggested by these sentiments, though I was aware of insuperable objections to the competency and relevancy of different articles of the accusation, as well as to the admissibility of evidence proposed to be brought forward by the prosecutor, I resolved not to take the least notice of any such objection, until after the proof in support of the prosecution should be concluded.—By this means I ensured the attainment of my great object of possessing my judges of the full knowledge of all that my accuser could find to say to my disadvantage, and of putting me on my defence, in the face

of the world, to clear my fame from the foulest and blackest stains, which the most vindictive, and the most inventive malice had contrived to cast upon it.

Thus far I conceived myself to be at liberty, innocently, to admit of the gratification of my personal feelings. But I considered, that I was not entitled to suppress the objections referred to altogether. The case of a man publicly tried in a court of justice, is, in its operation and consequences, a case of the public.—The recorded *fact* in my trial of yesterday, becomes the *rule* of decision in my brother's trial to-day. And the fortunes, characters, and lives of thousands, may be endangered, or unjustly destroyed by the establishment of a single illegal precedent. These considerations prevailed upon me to state such objections, in point of law, as occurred to the proceedings in the course of the trial—but not till after the charges were fully opened and enlarged upon by the prosecutor, and the whole proofs, parole and written, produced to substantiate them, were finally closed.

The trial lasted twenty-five days, of which twenty-one were employed by the prosecutor. My defence, and proofs, were finished within the remaining four. As far as my defence was supported solely by the evidence brought out in the examination of the prosecutor's own witnesses, and in documents admitted, or produced by himself, I considered the publication of the proof to be unnecessary; as the circumstances themselves, joined with the decision of the Court, sufficiently demonstrated, that my accuser had totally failed in his attempt to verify his accusation. But where any testimony given by him, or by any of his witnesses, called for contradiction and refutation on my part, I have thought it proper to publish the proof on both sides, in order that the public may at once see my acquittal, and the grounds in justice on which it proceeded.

The charges were arranged under four several heads. In the discussion of the FIRST, nothing surely was more remarkable than, that my accuser produced and founded upon a document as material to support *his* accusation, which, on being called for by me as material to substantiate *my* accusation in his own trial, was *then sworn* by

by his witness, Mr Seward, to have been *lost during the mutiny* two years before;—and that this same witness, again called by Major Gordon, *now deposed*, that the very document sworn by him in the Major's trial, to have been lost in the mutiny, was *not put into his possession until a fortnight after the mutiny.*

In the course of discussing the SECOND charge, many extraordinary things occurred, and some important discoveries were made. The detail is certainly worthy of the perusal of your Royal Highness*. One remarkable circumstance is, that, prior to the departure of my regiment from Dominica, in April, 1802, Mr Seward had fraudulently possessed himself, with my accuser's knowledge, of L. 462, 14s. 6d. of Government money; another, no less remarkable, is, that the pay-lists from *25th December*, 1801, to the *24th of September*, 1802, the date of the reduction of my regiment, instead of having been completed *monthly in the West Indies*, in conformity to *His Majesty's regulations*, were *made up, certified*, and *sworn to* by Major Gordon and Mr Seward, at the *office in Great Marlborough-street, London*, and not given in to the War Office here till *September or October*, 1805; and a third circumstance, equally remarkable with any of the foregoing, is, that Mr Seward has confessed a balance due by him, on those pay-lists, to Government, of no less than L. 2,172 sterling; and yet, neither those repeated acts of disobedience to the established regulations, nor the frauds and embezzlement of the public money, nor that large confessed debt to Government, have, to this hour, been the subject of animadversion, of investigation, or of notice.

Among the *witnesses* brought forward to prove this charge, however, the most conspicuous figure was made by my accuser himself. Besides deposing to various conversations with Messrs Kerr and Salton, two respectable gentlemen, his own witnesses, which they concurred in refuting, he endeavoured, by his own oath, to make the Court believe, that I had told him a falsehood, unbecoming my rank, and the character of an officer. Fortunately, he had set his invention to work in framing a suffi-

* From page 40 to 74.

ciently plausible, and very circumstantial story, in order to give his accusation something at least of the garb and fashion of probability. But this erved only to excite enquiry, how far it had any foundation in truth, and to demonstrate the fact, that it had none.—Yet, upon no other basis than this fabric of a vision had my accuser reared the deepest and most severe of all his charges against me—a charge which, if true, must not only have for ever disqualified me for the honourable profession of bearing arms in the service of my King and country, but have degraded me from the rank of a gentleman, and rendered me an out-cast in civil society.—Permit me, Sir, with becoming humility and deference to ask; Is the inferior officer, who brings his superior to trial before a court-martial, upon a false charge of so atrocious a description, and who scruples not to support the falsehood, in open Court, by his oath, to be held guiltless?—If not, ought his guilt to be suffered to pass unpunished and unnoticed?

The THIRD charge has become remarkable by the deposition of my accuser, in support of one part of it, and by circumstances to which, though in themselves immaterial, and unfit to be taken into consideration, in judging of the merits of the case, the extraordinary issue of the business has given an eclat, and an importance which, in a different event, they never could have acquired.

The subject of this charge is stated in pages 3 and 4. The single witness *for the prosecutor*, who swore positively and precisely as to facts and dates, respecting the *first* branch of this charge, viz. the working of soldiers on my own lands, was the *prosecutor* himself: who, unfortunately, in this, as in previous instances, was convicted by other testimonies, and by collateral real evidence, of having sworn falsely. Thus, he swore that, sometime in July, 1801, he saw a number of men, whom he conceived to be recruits, working among canes behind Government House. And, on being cross-examined, he deposed, that these canes might be about *two feet high*.—But it was clearly established in evidence, that the canes alluded to in his oath, were only *planted* in *July*, 1801; consequently, they could not be two feet high sooner than *October* or

November thereafter;—farther, that those canes were planted in July, by a sugar gang of my own negroes, ordered for that purpose from my estate of Stewart-Hall, at several miles distance, whom the soldiers were not allowed to assist in that work, or even to associate with; and finally, that the detachment mentioned in the charge, quitted Roseau, that is, the neighbourhood of the Government-ground in question, in the end of July, 1801, and never afterwards returned thither.

There was no point in the case, where the evidence was more conclusive and satisfactory to the Court, than what related to this charge of working the soldiers on my own lands. In truth, I had not gone through one half of the proof I was prepared to produce in defence against it, when the unanimous sense of the Court, that I had fully proved my defence, was publicly declared to me; in consequence of which, I desisted from examining a number of most respectable witnesses, who, though they could not have strengthened the conviction, already complete, would have confirmed and illustrated the previous evidence.

The latter part of this charge resolves into two articles of accusation, to which the particular attention of your Royal Highness is requested. The *first* is, that I ordered men of my regiment to be employed in cutting wood in the swamp at Prince Rupert's, without directing them to be paid for their labour. And the *second* is, that I gave such order from interested motives, with a view, says the charge, to convert the same (that is, the swamp) to my own use.—That these two points entirely exhausted the matter of this branch of the charge, agreeably to the only possible construction that the terms in which it is expressed will bear, as well as in the full comprehension of my accuser's meaning, is clearly ascertained by the explanation which took place upon my humble deprecation of the great delay of justice solicited by him, on the frivolous and hollow pretence of Sir Thomas Trigge being an essential witness for the prosecution.—On being desired to state, for the information of your Royal Highness, what were the points he expected to establish by the testimony of Sir Thomas Trigge? My accuser wrote to the Deputy

Adjutant General, that " by Sir Thomas's evidence, and " the correspondence between him, his Secretary, and me, " prior and subsequent to the mutiny, he had every reason " to believe, that, not only the fact, of the men *having been* " *ordered* by Brigadier-General Cochrane Johnstone, to be " employed in that work, and *neither paid, nor directed to* " *be paid*, for their labour, which, it would appear, led to " such fatal consequences, will be completely established; " but also, that *his interested motives*, in directing them to " be so employed, will be placed in a clear point of view*." A copy of that letter having been transmitted to me by the Adjutant-General, I wrote, in answer to it, that in case Major Gordon had lost my order issued to him for employing a detachment of my regiment in cutting the brush-wood at Prince Rupert's, " I can have no hesitation " in *avowing, that I gave such order to Major Gordon, and* " *that the men were not paid.*" I trusted that this admission would divest my accuser of every pretext for insisting in the delay of my trial till the arrival of Sir Thomas Trigge, as I could not imagine that he, or his Secretary, had any peculiar access to penetrate my *motives*;—and indeed, I could not bring myself to believe, that this idle and groundless aspersion was offered to the Court with any serious view. But the object of my accuser was delay; and he obtained it†.

The terms of the charge being clearly defined, as above, the preparation for my defence was regulated accordingly. As to my motives, I could not pretend to prove a *negative*, and had only to wait my accuser's attempt to attach an imputation, in reference to these, upon my character, which I had no doubt would recoil upon his own.

The working of the men, by my orders, in cutting brush-wood, without paying them otherwise than by an *extra* allowance of rum, was admitted; and therefore, it became essential for my defence, to shew, that such work was in itself useful, was sanctioned by the general example and practice in West India regiments, and that the men ac-

* See Correspondence, cvii.
† See Correspondence, cx.

cordingly expressed no dissatisfaction at being so employed.

That my preparation was directed to these objects, on this charge, and to no other, your Royal Highness will presume, from the circumstances which have been explained. Besides the points just mentioned, there was nothing in the charge against which I could possibly suppose it was at all necessary for me to be on my guard.—Not to accumulate proofs unnecessarily, I shall therefore produce only one from several demonstrations in my possession, of the defined mode of preparing my defence.

Having summoned Lieutenant-Colonel Wilson, late of my regiment, as a witness, to prove several very material parts of my defence, I had the mortification to receive from him a letter of the 4th February last, in which he writes:

"DEAR SIR,

"Having made all my arrangements to "proceed to Ceylon with General Maitland, and having, "on Mrs Wilson's account, come under engagements re- "lative to accommodations aboard the Wyndham; this "detention will not only prove a severe disappointment, "but a heavy loss:—I therefore request you will have the "goodness to consider how far my evidence may be abso- "lutely necessary in your defence, and whether there may "not be others under different circumstances, who can "equally ascertain and give evidence on any point to which "I could speak.

"Nothing but the circumstances to which I have al- "luded, would have induced me to make this application; "and should you be good enough to comply with it, I "shall be happy to answer in writing, any questions you "may wish, relative to any point connected with the bu- "siness.

"I am, dear Sir,
"Your very obedient
"Humble Servant,
"JOHN WILSON,
"Lieut. Colonel."

Distressed by this application, and at the same time unwilling to be the occasion of the very great inconvenience which Colonel Wilson represented he would suffer, from his detention in this country, I finally took the resolution which my feelings dictated, and returned the following answer on the 6th February:

"DEAR COLONEL,

"You are aware, that *many months* "*ago* I intimated to you, that your presence as a witness "was very material at my Court Martial—I am still of the "same opinion; but as you state, that your detention in "this country will be a severe disappointment and a heavy "loss to you, I shall therefore forego your attendance, and "shall take my chance of the weight which the Court "will give to your answers to the following questions.

"You will be pleased to write your answers opposite to "the questions.

Did you, in the year 1800, take charge of a bale containing scarlet cloth and facings and buttons for the officers of the 8th West India regiment, purchased by me for their accommodation, and to whom did you deliver it?

The bale was aboard the ship I went in to the West Indies; and I took charge of it from Martinico to Antigua, where the Quarter Master received it.

When you was the commanding officer of the 8th West India regiment at Antigua—was the corps very frequently employed in duties of fatigue for the interest of his Majesty's service, and did the men receive any compensation for their labour?

I frequently had strong working parties employed in improving the road to the Barracks, for which the men had an extra allowance of rum.

Did the men ever express any dissatisfaction, or ever make any complaint at their being so employed?

No.

Was you the commanding officer of the 8th West India regiment from their arrival at Prince Rupert's, Dominica, on the 6th of July, 1801, to the period of your embarking for Europe?

Yes.

When did you embark for Europe from Dominica?

The latter end of July, or the beginning of August, in the first August packet.

Did you, while commanding officer of the 8th West India regiment, at Prince Rupert's, Dominica, employ the men in cutting the brush-wood, and on other duties of fatigue necessary for the health of the post, and the interest of his Majesty's service, and did the men receive any compensation for those duties?

To the best of my recollection, I had parties employed in cutting the brush-wood between the cabrites, for which I gave them an extra allowance of rum.

Did the men ever express any dissatisfaction, or ever make any complaint at their being so employed?

No.

I ever am,
Dear Colonel,
Your faithful
Humble Servant,
(Signed) A. C. JOHNSTONE.

(Signed) JOHN WILSON,
Lieutenant-Colonel.

Your Royal Highness will perceive, that the questions put by the Court, as well as by the parties, were directed to the same objects with those which occupied my attention previous to the trial; that the work, in the opinion of medical gentlemen, would be of benefit to the garrison; that the men employed were, by my direction, allowed an *extra* quantity of rum; that it was customary, in the West Indies, to employ *white* as well as black troops, in clearing ground from wood, and in filling up swamps, for the health of the garrisons, without giving them any compensation for their labour, further than an extra allowance of rum; and in general, that detachments of the regiments quartered in the different islands, were accustomed to be exercised on all duties of fatigue, when necessary or proper, without receiving any pay, or other recompence, than as above-mentioned, and without making any objection or complaint on account of their being so employed *. On these grounds I rested the justification of my order for employing the men; and my accuser, whose *own testimony*, given when the facts were recent, and before his action of recrimination was thought of, went to my complete exculpation; was unable to support, by the least vestige, or colour of evidence, his imputation of *interested motives*..

He was not more successful in his endeavours to substantiate his FOURTH charge.

The COURT pronounced the following judgment:

" The Court Martial having weighed the whole of the " evidence adduced by the prosecutor Major Gordon, and " that brought forward by the Honourable Colonel An- " drew Cochrane Johnstone in his defence, is of opinion, " that the L.500 bill, mentioned in the First Charge, was " not clandestinely obtained by Colonel Johnstone; and " that it doth not appear, that His Majesty's service, or " the good of the regiment, was in any degree injured by " that transaction; and therefore the Court doth honour- " ably ACQUIT him of the former part of the First " Charge.

" With regard to the second part of the First Charge;

* Pages 96 to 100.

" viz. directing L. 140 to be stopped from the Paymaster,
" out of the subsistence due to the regiment, the Court
" is of opinion, that no blame whatever attaches to Colo-
" nel Johnstone in this transaction, and they therefore
" also honourably ACQUIT him of the same.

" With regard to the first part of the Second Charge,
" the Court is of opinion, that it hath not been proved,
" and therefore ACQUITS Colonel Johnstone of the same.

" And, with regard to the second part of the Second
" Charge; viz. the having asserted a falsehood unbecom-
" ing his rank, and the character of an officer, the Court
" doth most honourably ACQUIT him.

" With respect to the first part of the Third Charge,
" it appearing that the offence set forth therein, took
" place (if at all) above three years prior to the date of
" His Majesty's warrant for holding this Court Martial,
" the Court is of opinion, it hath no power to take cogni-
" zance of the same.

" With regard to the second part of the Third Charge,
" the Court sees no reason whatever to believe, that Co-
" lonel Johnstone had any intention to derive individual
" benefit by the labour of the men from working in the
" swamp, and they therefore ACQUIT him of the charge;
" although they cannot approve his having ordered the
" work on the swamp, under all the circumstances of the
" case.

" With respect to the Fourth Charge, the Court is of
" opinion, that it is not substantiated; and therefore AC-
" QUIT him accordingly."

Of this decision, His Majesty APPROVED; and the Court Martial was, in consequence, dissolved.

With regard to the legal effect of this decree, I believe that, from one end of the British empire to the other, there can be but one opinion.—The prosecutor's charges were annihilated. And my character and conduct, the objects of their attack, stood differently from what they would have done, had those charges never existed, only in as far as, like gold from the furnace, they had come forth from their trial with heightened lustre.

I do not enquire into my rights of indemnification under

these circumstances, which, it must be allowed, were pretty extensive. At present, I limit the consideration of my pretensions to bare justice. Thus far, my title will scarcely be disputed. In this view, my case is abundantly simple and clear, hardly admitting of discussion or argument on either side.—It is shortly this:—My claim to the rank of Major General in the promotion, 1st October 1803, which, except for Major Gordon's supposed charges, was confessedly *unquestionable*, became, on my trial and acquittal from the whole of those charges, *irresistible*.

I am far from meaning to insinuate a doubt of His Majesty's power, by his Royal prerogative, of expunging the name of any officer, without cause assigned, from the list of his army. But the case here is widely different from any in which such exercise of the prerogative ever took place. His Majesty proceeded against me in the due and ordinary course of law. He issued his warrant for the assembling of a Court Martial for my trial; and, unless upon the incredible supposition, that this case was meant to be an exception to that of every Court Martial of which the world had ever seen an instance, the result of the proceedings was certainly to be the rule for His Majesty's judgment of the merits of the charges, as well as of the justice of my claim for the rank with-held from me. To speak in the language with which I am little acquainted, but which is abundantly intelligible, His Majesty had joined issue with me in a proof of the charges included in his Royal warrant. The Judges assembled under this warrant, were sworn to try that issue.—The witnesses called on both sides, were sworn to give true evidence respecting that issue.—And if all these proceedings, delayed for many months on account of the absence of a single immaterial witness, and after their commencement, protracted to an uncommon length of time, and conducted throughout with the most impressive solemnity, were to be held mere children's play; if the result, though completely favourable to me, was to be productive of no one object or benefit, which could have induced me to stand at all on my defence; and if this example shall be drawn into precedent; I venture, with some confidence, to affirm, there is not to be found a man of sense and candour, who would not consider the trial by Court Martial as, in its nature, a

burlesque upon investigation, and, in its result, a mockery of justice.

That these sentiments are in perfect unison with those of your Royal Highness, the letter with which you was graciously pleased to honour me, December 10, 1803, clearly demonstrates. In regard to my promotion to the rank of Major General, you observe, "Whenever an in-"vestigation shall have taken place, *and should the result* "*prove favourable to you*, there will *not be any difficulty* "in your recovering the rank to which your seniority as "Colonel entitles you." It is impossible for me to express the satisfaction I have felt in the possession of this letter. The consciousness of innocence made me ever ardently court investigation; and having no apprehensions as to the result, I reposed in perfect security and reliance upon the word of your Royal Highness thus graciously plighted, until the event to which its fulfilment was referred should arrive.

Upon receiving a letter from the Judge Advocate General, inclosing a copy of one he had transmitted to your Royal Highness, containing the sentence of my Court Martial, I took the earliest opportunity in my power of presenting myself for admittance to your presence. My sole object was, with becoming deference and respect, to claim the performance of the promise made to me by your letter, of 10th December, 1803, and to express my humble hopes, that, pursuant thereto, there would not be any difficulty in my recovering the rank, to which my seniority as Colonel entitled me.—I am free to own, that I preferred this application, which a sense of duty suggested, in perfect confidence of success, because I held your gracious compliance with it to be a debt of honour, which your Royal Highness would, of course, consider as having a preferable title to payment.

On my being admitted, after some obstructions and delays, to the honour of an audience, I should in vain attempt to disguise the amazement in which I was fixed, on being told by your Royal Highness, that His Majesty had expressed his *determination*; or, according to your ex-

planation since, his "*inclination* not to give me my rank "of Major-General *."

Conceiving it to be impossible for me, in consequence of such *inclination* or *determination*, expressions of disposition equally fatal to objects of Royal hostility, to continue to hold, with credit to myself, or with advantage to the service, my military commission under His Majesty, I humbly requested that your Royal Highness would be graciously pleased to lay my commission as Colonel, with all due respect, at His Majesty's feet.†

On the subject of that request, I had the honour of receiving the letter of your Royal Highness, notifying His Majesty's acceptance of the resignation of my commission as Colonel, to which this is an answer.

I have no occasion to resume previous observations.—On the footing of the decision of my Court Martial, I am indisputably entitled to the rank of Major General, and to high damages against all principals and accessaries in the calumnies and persecution happily exposed, and firmly believed by me to have been terminated by that decision.

Upon what ground, then, will every officer of the British army demand, have you, the Honourable Andrew Cochrane Johnstone, after an acquittal from every imputation on your character, by one of the most respectable Courts Martial ever assembled in any country, been denied your just right to the rank which belonged to you, and been ultimately compelled, by your sense of honour, revolting against injustice and persecution, to quit the profession in which you had so faithfully served, and to which you was so strongly attached?

To this natural enquiry by my late companions in arms, and on which they will look for some satisfactory explanation, I can only answer, that the copy sent me of the Judge Advocate's letter to your Royal Highness, containing the sentence of my Court Martial, with His Majesty's APPROBATION thereof, concluded with the two following paragraphs:

* See page 171. † See page 169.

"With respect to the circumstance of the Court having been inhibited from taking cognizance of one of the most material articles of charge, by reason that it appeared, upon explanation, that the supposed fact, which the prosecutor had in contemplation, and which he expected to have been able to establish by evidence, certainly did not take place within three years antecedent to the date of this warrant for this trial; His Majesty considers this lapse of time to have been owing to an improper conduct of the prosecutor, who, instead of making *general* accusations, highly reflecting upon the character of Colonel Cochrane Johnstone, might and ought to have set forth in substance the particular instances of crimination which he had in view.

"In regard to another article of charge, imputing to Colonel Cochrane Johnstone his having, in the months of March and April, 1802 (a period within the cognizance of the Court Martial), employed soldiers of the 8th West India regiment in work towards clearing the swamp without paying them, or directing them to be paid for their labour; His Majesty perceived, with satisfaction, that the evidence has not furnished any reason to suppose, that he derived, or had in prospect, any individual advantage, as the prosecutor had by his charge suggested: His Majesty, however, expressed much disapprobation of the soldiers having been so employed and unpaid, more especially as Colonel Cochrane Johnstone acted therein upon his own sole authority, and without the assent or privity of General Sir Thomas Trigge, who commanded in chief, and whose sanction it was his duty to have obtained before any such measure was taken."

Unfounded and injurious as both these paragraphs were, I confess that the insinuations in the *first* so much astonished me, and so entirely engrossed my attention, as, for a while, to prevent my taking due notice of the *second*. I was on a visit to a near relation in the country, when the Judge Advocate's letter was sent to my house in town; but immediately after perusing it, upon my return, I communicated to the Adjutant-General the light in which the former of the two paragraphs struck me; and, at his desire, I explained to him fully my sentiments on the subject, by

letter of the 19th ult.* At the end of a full week, which thence elapsed, marked by the significant circumstance, that no notification of the sentence appeared in General Orders, I received a letter from the Judge Advocate General, in which, after alluding to his having sent me a copy of his official letter transmitted to your Royal Highness, he adds: "I think it proper now to intimate to you, "that *I have since seen occasion to recal that letter, and to sub-* "*stitute another in lieu thereof*; in which last-mentioned let- "ter (the only difference which I know between the two) "the whole paragraph, which contains the remark upon "the article of charge, whereof the Court did not think "itself authorized to take cognizance, is omitted. *I have* "*taken upon myself* to explain to his Majesty, and I have "confidence *in being able to explain satisfactorily*, the oc- "casion of this remark being *now omitted*†."

I cannot explain to your Royal Highness, in a better place than this, that I consider the remarks in question as the sole and exclusive operation of the Judge Advocate General, or of some person in his department, for whom he is responsible. If I could have entertained a doubt of this, before receiving the letter just now recited, I could have had none since. Your Royal Highness perceives, that these letters, purporting to be the genuine vehicles of His Majesty's pleasure, Sir Charles Morgan has no difficulty in recalling, new-making, and new-modelling, according to his own will and pleasure.—This, he expressly avows, he does, without previously consulting His Majesty; and, as the instance in question shews, in matters of no light moment, reserving to himself to explain *afterwards* the occasion of his having taken the liberty of changing the Royal mind.

I am the more solicitous of being distinctly understood on this head; because the same freedom of discussion, which every liberal and impartial mind must approve as decorous in treating the remarks of the Judge Advocate General, or his Deputy, might justly be deemed less becoming, were the subject under consideration supposed to have originated from a higher quarter.

* See page 158.
† See page 163.

On the evening of the 27th ult. I received a letter from the Adjutant General, inclosing a copy of the letter which the Judge Advocate had *substituted in lieu* of the former, transmitted to Your Royal Highness, containing the sentence of the Court Martial, and omitting the first of the two remarks; but retaining the other, though equally exceptionable. Upon this I communicated my opinion by letter to the Adjutant General, on the day following *.

This brings me, without any material intermediate occurrence, to the receipt of the letter from Your Royal Highness, of the 16th instant, acquainting me with His Majesty's gracious acceptance of the resignation of my commission as Colonel.

In that letter, Your Royal Highness does me the peculiarly welcome favour of stating clearly and explicitly, the precise grounds on which the decision of the general Court Martial was set at nought, and my rank in consequence withheld.

After pointing out the distinction between the inclination and the determination of His Majesty relative to my rank of Major General, the letter proceeds in these words: "I must however observe, that, in consequence of the "public letter of the Judge Advocate General, transmit-"ting to me the decision of the general Court Martial, "(on *which letter alone* I must form my opinion on the "whole matter of your case) and in which the Judge Ad-"vocate General conveys to me *His Majesty's approbation* "*of such decision*, together with the *remark* which His Ma-"jesty was pleased to express upon your conduct; I can-"not conceive, that so long as the strong displeasure of "His Majesty remains upon the public records of the "army, that I should be warranted to take upon myself "to recommend to His Majesty, that an officer *labouring* "*under such high censure*, should be promoted in His Ma-"jesty's service."

To an unprejudiced reflecting mind, the history of these proceedings is not likely to hold up any very flattering views of the excellence of the British military code. An

* Pages 166, &c.

officer is subjected to public trial before a general Court Martial, upon charges deeply affecting his fortune and character. He undergoes this ordeal in open court, before the eyes of the world, in presence of his accuser, and of the public prosecutor. After evidence taken by a cloud of witnesses, and by authentic documents of the most satisfactory nature; and after the most solemn deliberation, his Judges acquit him of every article of the accusation.—His Majesty approves of the *total* acquittal: but, in the moment of unqualified Royal approbation, the Judge Advocate General in effect reports a sentence, supposed to have been awarded by His Majesty against the prisoner, inferring the same forfeitures and penalties, as if he had been *found guilty* of every charge, by the judgment of the general Court Martial.

Such sentence, it appears, the Judge Advocate can recall, vary, or do away at pleasure. But Your Royal Highness finds, that you possess no such power or controul; that you must form your opinion upon the Judge Advocate's report *alone;* and that you are bound to act upon it, exclusively, as a paramount authority to the final decision of the Court, approved by His Majesty.

I confess, after turning the subject again and again in my thoughts, I could not help viewing it in the light just now mentioned; but until I received the letter of Your Royal Highness, I was unable to make up my mind fully with regard to it. I imagined that I must be under some great mistake; but I could not discover where my error lay. Your most gracious communication perfectly removes my doubts, and ascertains the cause and manner of the decision of my fate, while it leaves me astonished to learn, that there should be understood to exist, within the British dominions, the most singular instance of clashing jurisdictions—the most wonderful species of *imperium in imperio,* that is to be found in any part of the known world.

A phenomenon of this prodigious aspect is an object not merely of curiosity; it demands the most grave and serious attention. Your Royal Highness perceives an undefined tremendous power, which levels with the dust the established Courts of military law; and which, arming it-

self in *secret*, discharges from under cover its mortal shafts; blasting where it smites; and dooming, as criminals, to the severest punishments, men whom the laws of their country have acquitted and honoured as innocent. Whence then has this power its origin? What is its foundation? Is it recognized by the constitution and laws of England? Is it sanctioned by the transcendent authority of Parliament? These are subjects of enquiry meriting the consideration of Your Royal Highness. They are interwoven with the best and dearest interests of British subjects.

Though the discussion of the subject of these enquiries, in a manner suitable to its extent and importance, must be reserved for an abler pen than mine; yet I may be permitted, without incurring the censure of presumption, to state such observations upon it as have been suggested to me by the circumstances of my own case, and by the recollection of some general principles, respecting which, as far as I know, there exists no difference of opinion.

I understand it to be universally acknowledged, that the military law is a part of the law of the land, enacted by the same authority, enforced by the same power, and founded upon the same principles of expediency, reason, and justice. In like manner it is agreed, and indeed it necessarily follows, from what has just been observed, that no part of the judicial power, in the public administration of justice in military cases, can be exercised by the King, by whom the whole of that power is delegated to the Judges of the Military Courts; which, like His Majesty's Civil Courts, are the grand depositaries of the laws, and are invested with a known jurisdiction, regulated by certain and established rules, which the Crown itself cannot alter but by act of Parliament. The Mutiny Act, which is the joint operation of the whole branches of the Legislature, empowers His Majesty to constitute Courts Martial, with authority to try, hear, and determine cases of military delinquency; and to the Courts so constituted, the whole of His Majesty's judicial authority is committed.

Your Royal Highness will clearly perceive, therefore, that the Court assembled for my trial, possessed, under the express authority of an act of Parliament, the sole and exclusive right and power to try, hear, and determine

the charges on which I was arraigned: and the decision given by that Court, was equally binding and conclusive for and against all parties concerned, equally entitled to execution in all respects, and, if I may so express myself, was an equally valid and sacred charter of my character and conduct, as if it had been the immediate act of King, Lords, and Commons, in Parliament assembled.

Thus far, I have said nothing but what, if I mistake not, every body knows, and nobody disputes. And I have not heard of any power, short of Parliament, competent to repeal a decision, or act of Parliament.

I should not be surprised, if, owing to the circumstance of Courts Martial being constituted for special purposes, and with a temporary duration, vulgar errors prevailed with respect to the sacredness of their office, and the extent of their powers. But imagination can figure no apology for a Judge Advocate General, who, under affected ignorance, should attempt to frustrate the effect of the decision of a Court Martial; and still less, for one who should advise the Executive Branch of the Legislature, singly, to reverse, or resist the act of the entire Legislative body.

Every man of ordinary education, though neither a soldier, nor a lawyer, knows, that the Royal authority, by which Courts Martial are appointed, ceases from their appointment till their judgment is pronounced. The King can no more interfere with the procedure of Courts Martial, in the execution of their duty, than he can with that of any of the Courts in Westminster-Hall. "Nor (says "the learned Judge before alluded to) even after the "Court Martial has pronounced its sentence, is it in the "power of the Sovereign to *add to*, or *alter*, that sentence "*in any one particular*, unless a recommendation to that "effect shall be therein contained. The King, in virtue "of his prerogative of *mercy*, may entirely *remit the pu-* "*nishment* which the Court has awarded, or, by *disappro-* "*ving* of the sentence, he may order the Court to *sit again*, "and to *review* their procedure and judgment; but he "can no more *decree any particular alteration of their sen-* "*tence*, than he can alter the *judgment of a Civil Court*, or "*the verdict of a Jury*. Even with regard to a review of "the sentence, the Sovereign's powers are limited; for

" it is declared by the Mutiny Act, that no sentence given
" by any Court Martial, and signed by the president there-
" of, shall be liable to be revised more than once. The
" Sovereign's power of remitting the sentence of a Court
" Martial again to the same Court for their review, is
" founded on this *ratio*, that the sentence itself is deemed
" incomplete till it shall receive the Royal sanction; or
" that of the person duly authorised by the Sovereign to
" approve of the same, and to enforce its execution."

And afterwards, " As no sentence of a general Court
" Martial is complete, until it has received the approba-
" tion of His Majesty, or of the Commander in Chief to
" whom that power has been specially delegated, the
" King, or such Commander, disapproving of the sentence,
" may order the Court to *reconsider* or *review* their pro-
" ceedings, and recommend to them an alteration of their
" judgment: but as it is not consistent with the Royal
" powers, under the British constitution, actually to ex-
" ercise *any judicial authority*, which belongs *alone* to the
" courts of justice, so His Majesty can neither himself
" make *any alteration on the sentence* of such courts, *nor*
" *commit that power to any other*. All, therefore, that is
" *competent* for His Majesty to do, if the sentence of the
" Court Martial shall not meet with his approbation, is to
" order the Court *to revise their proceedings*: and even *this*
" *power* is limited; for the Mutiny Act declares, ' That
" no Sentence given by any Court Martial, and signed
" by the President thereof, shall be liable to be revised
" more than once."

The learned Judge proceeds to observe; " By the con-
" stitution of Great Britain, the King has the power of
" *pardoning* or *remitting* the sentences of Courts Martial,
" as of *all other* Courts of Justice. This branch of the
" Royal prerogative is founded upon this *ratio*, that as the
" King represents the body of the Public, and possesses
" by delegation all its powers and rights with regard to
" the execution of the laws, all breaches of the public
" law are considered as personal offences against the Sove-
" reign; to whom therefore it belongs of right to *par-*
" *don* offences committed against himself: and as it is
" not competent for any Court, by its own authority, to

" dispense with the rigour of positive laws, however strong-
" ly the particular circumstance of a case may plead for
" such dispensation; so it is of the utmost consequence
" for the ends of justice, that an equitable power of *this*
" *kind* should be lodged with the chief Magistrate, from
" whose hands it is likely to be issued with the least ha-
" zard or suspicion of partial or impure motives."

Such is the law, supported by many high authorities, laid down in the treatise of a Senator of the supreme civil judicatory of my native country, whose principles are sufficiently known to have always been the reverse of hostile to the prerogatives of the Crown; and who gives his work to the public as " the joint result of the Author's read-
" ing and inquiry into every source of information relative
" to the military law of this country, and of his profession-
" al experience in the forms and practice of General Courts
" Martial, during a period of several years, in which he
" had the honour of holding His Majesty's Commission
" of Judge Advocate for Scotland." After handsomely avowing, that he had availed himself of the knowledge of those who were best qualified to resolve his doubts, he adds; " it would be a failure in justice, as well as in gra-
" titude, not to acknowledge the useful information which
" has been readily and politely furnished him *by Sir Charles*
" *Morgan, Judge Advocate General,* on *all* points on which
" he had occasion to consult him."

The foregoing observation upon the defined exercise of the prerogative, are indeed obvious and necessary deductions from the admitted position, that the Martial Law forms a part of the law of the land. There is scarcely a person in this country, be his station or degree ever so humble, who requires to be told, that the King cannot annul or reverse any decision of a sheriff in a cause of forty shillings value, or any sentence of commitment by a Justice of the Peace; and far less any decree of his Court of King's Bench, or other high court of justice. The decisions of Courts Martial are, by law, placed equally beyond the reach of interference or controul by the Royal prerogative. The only peculiarity in the practice of the latter, is, that they may be directed by the King, to review their proceedings once, as before noticed. But then,

if they adhere to their former judgment, it must be confirmed. The King has no longer a power to with-hold his approbation. And what puts the matter beyond the possibility of doubt, is, that the mode of redress prescribed by the Mutiny Act, is the same with what is followed by the party conceiving himself to be aggrieved by the decree of any civil court, not in the highest sense supreme, viz. in the first instance by bringing a writ of error in the Court of King's Bench; and thence an appeal to the House of Lords, as the tribunal in the last resort.

Thus His Majesty cannot, by virtue of his prerogative, invalidate, in the smallest degree, the decisions of Courts Martial, which must remain effectual, and irreversible, unless upon review by a superior Court. In these, as in the cases decided by the ordinary courts of justice, the Royal province extends solely to the remitting or mitigating of the *punishment*; and though it may be difficult to assign a satisfactory reason, why the former are not accustomed to review their sentences, except when directed by the King to do so; while the latter, of their own accord, grant new trials upon cause shewn by the parties: yet I apprehend, that the same principles of equity and clemency will be found to govern the proceedings of both. And as there has yet been no instance in the Court of King's Bench, if I am truly informed, of granting a new trial, where the prisoner was *acquitted* upon the first; so I trust it will be found, that His Majesty's power of directing a revision of the sentence of a Court Martial, has never been exercised in the case of an honourable acquittal, by such sentence, of the prisoner, from the whole charges on which he was tried.

If this is the case, of which I entertain no doubt, much more may it be relied on, that no instance has occurred of His Majesty in person pronouncing a judgment of condemnation upon a prisoner, whom a general Court Martial had acquitted. Not to mention the greater crimes, which, with their appropriate punishments, are defined and regulated by the Mutiny Act, even those subordinate penalties, which it is made competent, *by the authority of Parliament*, for the Sovereign to enact by articles of war, cannot be inflicted *but through the medium of a Court Martial*, which,

all the writers on military law agree, possesses the essential characteristics of a *Jury*, and is in fact a trial of the subject by his peers.

All offences are either against the King's peace, or his crown and dignity; and therefore it would be a great absurdity to suppose the King invested with a judicative capacity in criminal proceedings, because, in regard to these, he appears in another capacity, that of *prosecutor*; and were both to centre in the same person, it is well observed by Sir William Blackstone, they would have an operation incompatible with the constitution of England, by which justice is bound to be administered *in mercy*. This, he adds, is promised by the King in his *Coronation Oath*; and it is that act of his government, which is the most personal, and most entirely his own. The clause in the oath alluded to, is this: "The *Archbishop* or *Bishop shall say*, Will you "to your power, cause law and justice, *in mercy*, to be ex- "ecuted in all your judgments? The *King or Queen shall* "*say*, I will." The eminent Judge, in the passage referred to, proceeds to observe: The King himself *condemns no man*; that rugged task he leaves to *his Courts of Justice*—the great operation of his Sceptre is *mercy!*

Having thus endeavoured to explain to your Royal Highness my humble ideas of the constitutional powers of Courts Martial, and of the constitutional exercise of His Majesty's prerogative, in respect to their proceedings and decisions, I shall now request your attention to the particular circumstances of the cases which have given rise to this inquiry.

The first of these occurred in the trial of Major Gordon; on which I have only to observe at present, that although the Court inflicted no censure upon my conduct on that occasion, the Judge Advocate General reported, by a paragraph subjoined to the sentence, a very severe one, for which he said he had His Majesty's directions. In that paragraph, Major Gordon and I were said to have improperly protracted the proceedings; and each of us, "as if "urged by a rooted animosity, endeavouring to depreciate "the character, and to place every act of the other in the "most unfavourable point of view."

Now, I believe no person who reads the above, will hesitate to pronounce it a sentence of condemnation awarded

against both parties in the trial; and being a sentence of that description, neither given nor warranted by the Court, but said to have issued directly from the mouth of the Sovereign, is clearly adverse to the established law of the land, and to the first principles of the constitution, as laid down in the writings of the great authorities above quoted.

It is indeed a sentence of singular construction—it is a condemnation of me, who was not on my trial; and it is a separate sentence of condemnation of the prisoner, superadded to that inflicted upon him by his Court Martial. I have elsewhere remarked upon the circumstance, that, while my *manner* in conducting the trial drew down upon me so severe animadversion, the *perjury* brought forward in support of the prisoner, entirely escaped the lash of the Judge Advocate General.

Not to dwell upon this scandalous and disgusting subject, I have to express my satisfaction, that your Royal Highness is in possession of documents, which ought to serve as a lesson to the Judge Advocate, or others in his department, to be a little more cautious in future, of dealing out indiscriminate censures, without regard to their truth or falsehood.

The letter, formerly mentioned, dated 4th April, 1803, addressed to Colonel Clinton, is a finished portrait of Major Gordon's mind towards me, drawn by himself previous to his trial. He may truly be said to have scattered poisons with an unsparing hand. His secret and unceasing endeavours to prepare, to season, and to inflame the breast of the Commander in Chief with prejudice and indignation against me, will hardly find a parallel in story.—I was still in the West Indies, ignorant of those secret attacks, without a possibility of answering for myself, when you was pressed to believe, that I was a swindler, and had fled from the fury of my creditors to a French island, where I had married, and would probably become a subject of France.—Such, to speak in the Judge Advocate's language, were the rooted animosity and endeavours of Major Gordon to depreciate my character antecedent to the prosecution, which he then knew I was on the eve of bringing forward against him. And now I have to request that your Royal Highness will observe, what were my dispositions upon the same occasion.

Having considered it to be my duty, on attaining a discovery of the facts on which I meant to found my charges against Major Gordon in the West Indies, to communicate these to Sir Thomas Trigge, as commander in chief of the forces, Sir Thomas wrote, suggesting to me, to lay a state of my discoveries before Lord Hobart; to which I answered as follows:—"Whatever representations may have been "made to Lord Hobart, upon the unfortunate business of "the mutiny of the 8th West India regiment, I shall cer- "tainly decline adding to them. Your Excellency will "see *how uncandid* it would be in me, *either to prejudge a* "*business which a Court Martial has yet to decide upon*, or *to* "*bias the mind of his Lordship against an officer, who will* "*not possess the same means of defending himself*. I can have "but one opinion upon the subject; but will rather owe a "coincidence of sentiment *to the determination of an un-* "*biassed tribunal*, than to my own ideas, however well "founded."—Such was the foundation in *truth* for the charge of rooted animosity against *each* of the parties in Major Gordon's trial, which the Judge Advocate General, trusting to the honest representation of his deputy, actually found means to get inserted in the general orders of the army.—And such is the tenure by which, according to the existing practice in the administration of the military law, the character, rank, and fortune of British officers are held.

The *second* instance of which I proposed to take notice, is, that of the *first* remark added to the sentence of my Court Martial, which indeed is very gross. Sir Charles Morgan recalled that remark, without avowing the cause of his doing so, which was my letter on the subject to the Adjutant General. And he wrote me, that he had confidence in being able to explain to His Majesty's satisfaction the occasion of that remark being omitted.—Beyond that letter I have no access to know what, or whether any explanation respecting that remark, was made to His Majesty at any time. But I will shortly explain to your Royal Highness, the true reasons why the remark, in question was first entered in the Judge Advocate's letter, for the purpose of being published in general orders; and why it was afterwards expunged, and the letter containing it of course

recalled, and another letter, omitting it, substituted in its stead.

I have mentioned, that Major Gordon's original statement of the first part of his *third* charge, to which the remark in question applies, expressly fixed the period referred to in the charge, "between the month of January and "the *end of July*, 1801." Major Gordon fixed the last-mentioned date, as the termination of the period within his charge, for this reason, that he knew the detachment of recruits whom he accused me of having worked on my own lands, when quartered at *Roseau*, had sailed thence, towards the end of July, 1801, for *Prince Rupert's*, where they remained with the regiment, till its final departure from Dominica in *April*, 1802.—This statement was given in to the department of your Royal Highness, on or before *the 20th of June*, 1804; that is, about *six weeks within* three years from the possible commission of the last act of the offence charged.—From that time, as previously, I continued, with due respect, but great earnestness, to urge on my trial. This I did particularly by letters addressed successively to your Royal Highness, to the Adjutant-General, and to the Deputy Adjutant-General, on the 7th, 9th, 20th, 24th, 28th, and 30th of *July*, 1804.—The charges, as finally adjusted, were lodged in the office of the Adjutant-General, at latest, on the 26th of that month; on which date I received a letter, enclosing a copy of them from the Deputy Adjutant-General, acquainting me, that the originals "*had been transmitted* to the Right Honour-"able the Secretary at War, for the purpose of being in-"serted in a warrant for His Majesty's signature." Why the Royal warrant was not then obtained, nor even upon my subseqent letters during the same month, deprecating any farther delay of my trial, and still possibly within the term of prescription, I am yet to learn. But so it was, that the period of three years, from the end of July, 1801, was allowed to expire before His Majesty's warrant for trying the charge, the competency of which was limited by that date, actually was issued.

In this situation of matters, it seemed necessary to do one of three things; either, 1st, To omit the charge in the Royal warrant, which would have saved the false-swearing

as to the canes; or, 2dly, To exhibit the charge in Court, as originally framed and given in to the Adjutant-General, which would have fairly shewn upon its face the incompetency of trying it; or, 3dly, To *recal* the charge given in by Major Gordon, *and to substitute another in lieu thereof.*— This last alternative, possibly from regard to *consistency*, was adopted, and the *time* referred to in the charge was extended a complete month beyond the extreme limits fixed by the prosecutor himself. In lieu of "between the "month of January, and *the end of July*, 1801," the words in the original edition, there were substituted in the charge on which I was tried, "for some months "preceding the *month of September*, 1801;" thus enlarging the latitude in respect to time, so as to comprehend the entire month of *August*, 1801, and thereby to remove the incompetency of trial beyond the 10*th of August*, 1804, *the date of His Majesty's warrant* for assembling my Court Martial.

The charge, thus curiously manufactured, was brought forward, and your Royal Highness is informed of the result.

I have, in the face of the world, called my noble and honourable Judges to witness, that I state every fact correctly and truly as it happened. And I am conscious of being incapable of meaning, or desiring to misinform, or to mislead the judgment of your Royal Highness, with relation to any one circumstance of my case. I beg leave here to repeat, that if there was a *fact*, in the whole course of the trial, *proved* more clearly than another, to the complete satisfaction of the whole Court, it was this, that the charge of my having worked recruits, or soldiers of my regiment, upon my own lands, or otherwise for my individual benefit, or at all, except for the benefit of His Majesty's service, was entirely and absolutely groundless and false. And had my anxious solicitations for bringing on the trial at an earlier period been listened to, the Court would happily have found themselves at liberty to express their strong sense of my justification on that head.

A criticism has been suggested on the words of this part of the sentence, "it appearing that the offence took place "(if at all) above three years prior," &c. This expression

has been said to imply at least a *doubt* as to the *fact*; for, otherwise, the Court would have declared their opinion, that the offence *did not take place at all.* The obvious answer to this, is, that the proposed amendment would have been nothing else than an express *judgment* upon the *merits* of the case, in direct violation of the Mutiny Act, and of the authority by which the Court were assembled.

The opinion of the Court appears, however, to have produced some unpleasant sensations in the department of the Judge Advocate General, and to have suggested the necessity of making some apology for the fate of the incompetent charge, which the author of the remark upon it is pleased to observe, the prosecutor *expected to have been able to establish by evidence.* If this is the observation of a person totally unacquainted with the trial, he is certainly reprehensible for not having informed himself better before presuming to give a positive opinion. But if he ever looked into the proceedings, and, being himself an official person, or writing what was to be signed by an official person, who was responsible for him, it was indispensably his duty to have done so; I should scarcely have expected any man to hazard so unwarrantable, and so impudent an assertion.—The charge, it is remarked, was one of the most material; that is, it was one of the foulest of false accusations, and the accuser comes forward in person to swear falsely in support of it!—This is what the *prosecutor* has been able to establish by evidence.

The remark proceeds to say, that *his Majesty* considers the lapse of the three years to have been owing to the improper conduct of the prosecutor, in making *general* accusations against me, instead of setting forth the particular instances of crimination. There is something extremely ridiculous, not to say worse, in supposing his Majesty to take an interest in screening the clerks or officers of any department, from the blame attaching upon their negligence, blundering, or ignorance. But when a person, in any department of the State, *takes upon himself* to speak in that sacred name, he ought to measure his language with peculiar care and circumspection. In the instance under consideration, Major Gordon, so far from making a *general* accusation, gave into the Adjutant General a most pointed

and specific accusation; and in regard to the *time*, or date of the facts charged, one, particularly clear, definite, and explicit. The latest point of the period included in the charge, was distinctly mentioned, and could not fail to strike the eye of every person who read the charge. And, upon the whole, nothing but the delay of obtaining his Majesty's warrant; for almost two months after the charge in question was exhibited, in spite of my unceasing prayers for dispatch, truly had the smallest operation in producing the lapse of the years of prescription, previous to my trial.

Accordingly, in my letter of the 19th ult. to the Adjutant General, I explained these circumstances, with others respecting my conduct in the trial, already mentioned. The Adjutant General could not fail to perceive the force of the considerations suggested: The publication of the sentence of the Court Martial was in consequence suspended; and, in the mean time, the remark was cancelled, and a new letter, omitting it, was issued by the Judge Advocate General to your Royal Highness, of which I was favoured with a copy.

I think it proper, before quitting this subject, to take notice of a wish which several of my friends have expressed, that the object of incompetency had not been stated at all. I am free to own, that I took my ground, not without some hesitation, and after much reflection. Had I consulted, and yielded to the sole impulse of my personal feelings, I certainly should have taken the course falling in with the wishes of my friends. But I am perfectly convinced, that I adopted the preferable line of conduct; and I have the satisfaction of knowing, that all my friends have at last avowed the same conviction. Independently of the reasons before mentioned, which influenced me; I was aware of an essential difference between the situation of the members of a Court Martial, and the judges of the ordinary Civil Courts. Of the latter it has been wittily observed, that they are the only class of his Majesty's subjects, who have the privilege of being ignorant of the laws with impunity. This cannot be said of the former, in whom a decision contrary to the rules contained in the military code, or, where that is silent, to the common law of the land, is a punishable offence, subjecting the members of the Court

Martial to trial, by indictment in his Majesty's ordinary Courts. Supposing then, that I had allowed the trial to be closed, without mention of the incompetency of trying the article in question, and that the Court, besides acquitting me, had, in virtue of their inherent powers, ordered my accuser to Newgate, or inflicted upon him such other punishment as they judged suitable to his offence, the whole of the proceedings might, by a superior Court, on account of the incompetency, have been declared illegal; and the members been exposed to trial for false imprisonment, or other malversation, as the case might be: I should not have stood acquitted in my own mind, had I wilfully neglected the opportunity that was in my power of guarding against consequences of such a complexion.

I shall now take my final leave of the Judge-Advocate's *first* remark upon my sentence, with this fair avowal, that I cannot find in my heart to acknowledge any obligation to him, either for its insertion in the first, or for its omission in the second letter to your Royal Highness. The evident purpose of the remark, was, under shew of a direct and harmless, though an unfounded reflection upon my accuser, to convey indirectly, a highly injurious and malicious attack against me; and the subsequent omission of it was palpably occasioned by the apprehensions entertained, in consequence of my letter to the Adjutant General, of exposing to the whole army, the miserable shifts, and contemptible pretences, resorted to for the purpose of palliating and disguising the faults of some persons in office.

As to the *second* remark, it is amusing to observe the parenthesis containing the reference to the *first*, carelessly preserved, after the object of the reference is no more; a circumstance which I should fancy, would not a little puzzle most of the officers, at hearing the general orders containing it, to discover its meaning. If, however, there was nothing in the remark worse than nonsense, I should have allowed it to pass without observation: But unfortunately it is in the concluding part of this remark that the fatal sentence is to be found, which has at once dashed me from my fairest prospects in life, and extinguished my hopes

of rising, upon the gradations of an honoured profession, to gain, the first object of my ambition,—a name in arms.

This is a momentous subject indeed; the attention of your Royal Highness cannot be too closely applied to the consideration of it.

Upon the subject of the remark, the words of the general Court Martial, are; "They ACQUIT him (Colonel Johnstone) of the charge; although they cannot approve his "having ordered the work on the swamp, under all the "circumstances of the case."

I believe I shall not give an unfaithful representation of the genuine import of this sentence, of which your Royal Highness will judge, when I say, that my judges were satisfied of the purity of my intentions and motives, at the same time that they did not agree with me in opinion as to the necessity or expediency of the order issued by me for employing the men in cutting the brush-wood on the swamp.—I am not sure whether I have not even stated the judgment, stronger against myself, than the mild suggestion in the sentence authorises.

Be that as it may, the Court finds *nothing culpable* in my conduct; nothing inferring *censure* or *punishment*. They appear to have thought, that I had, in the particular instance, erred *in* judgment; and they knew that "the *best* "may err," without the slightest imputation upon their moral rectitude, or integrity; therefore, though they could not approve of what they conceived to be an error, yet as it was not an error *against* judgment, or in any degree implying wrong or blameable intention on my part, they most justly, by their acquittal, declared me innocent.

This sentence, on becoming final, was equivalent to an act of the Imperial Parliament declaratory of my innocence of the charge, and reinstating me in the situation where I stood before any such charge existed. The result was completely favourable to me; and upon the general principles of law and justice, independent of express stipulation, your Royal Highness, taking the sentence of the Court Martial as the rule of your conduct, could not be expected thereafter to withhold my rank of Major General a single day.

The remark issued from the Judge Advocate's office,

expresses *much disapprobation* of soldiers having been employed on the swamp and unpaid; *more especially* as I acted therein without the assent or privity of Sir Thomas Trigge, whose sanction *it was my duty to have obtained,* before any such measure was taken.

It will be obvious to your Royal Highness, that I am here at once charged, condemned, and punished, for an offence totally distinct from any of those for which I was tried, viz. *breach of duty,* in having employed the men on the swamp, *without having obtained the authority or sanction of Sir Thomas Trigge.* No trace of any such article of accusation is to be found in the charges tried and determined by the Court Martial. Throughout the proceedings, no vestige is to be seen of any attempt by the prosecutor to criminate, or of preparation by the prisoner to defend, on any such ground.

Let me then for a moment suppose, that, the Court Martial itself had pronounced the above sentence of condemnation, it would have been null and void. The reason is manifest—it was no part of the offence charged, that I had ordered the cutting of the brush-wood, without the assent or privity of Sir Thomas Trigge. It was no part of the offence charged, that I had been guilty of a breach of duty, in not obtaining the sanction of Sir Thomas before giving that order. With what colour of justice, then, could I be *condemned* for an offence with which I was *not charged,* and for which, on that account, I could not be *tried*? Authority may enforce, but cannot elucidate these considerations. The learned Judge, already quoted, (cap. 7.) observes, that the Court cannot give judgment of condemnation, "where the offence *proved* against the prisoner "is either of a different nature altogether from that which "is charged, or of a higher degree of criminality; for the "Court is not warranted to go beyond the indictment, nor "has the prisoner received *a fair,* or *a legal notice* to pre- "pare his defence against either a *different crime,* or a *high- "er degree* of guilt, than is contained in the charges."— The justice of this is evident;—and it will not escape your Royal Highness, that the learned Judge puts a stronger case than the one in question, by supposing *evidence* to have emerged, in the course of the trial, of the prisoner's

greater criminality, or of his guilt of a separate crime; whereas there is not to be found within the four corners of my trial, a shadow of evidence that I was guilty of the breach of duty imputed by the Judge Advocate's remark. On the contrary, his Majesty's regulations, commanded by your Royal Highness, to be circulated, and strictly observed throughout the army, were produced to the Court Martial, and prove, that soldiers have *at all times* been liable to be ordered by their *superior officers*, on working parties, as a duty; and that orders for the performance of duties of fatigue are, in the regular course, issued by *officers in the command of brigades and regiments, forts, or garrisons*, according to their discretion*. Had I considered it to be relevant, or strictly competent, in my defence against the only charges I was aware of, I could have established, by incontrovertible evidence, that my conduct, in issuing the order for the work in question, was justified by the universal practice and example of every officer of my rank in the West Indies. The prospect of life, health, and comfort for troops in that climate, would be dismal indeed, if they must wait, numbers probably laid up in hospitals, till they obtained from distant head-quarters, after the precarious delays, which interposed seas, and shifting winds and currents may occasion, the Commander in Chief's permission, to cut, as in the instance in question, a little brushwood in a swamp, to dispel the pestilential vapours exhaled from it, or to remove any similar nuisance from the vicinity of their posts, for the preservation of their lives, of their health, and strength necessary to fit them for the efficient service of his Majesty.

The Judge Advocate remarks, that his Majesty expressed much disapprobation of the soldiers being employed *and unpaid;* and yet, his Majesty's regulations and orders, commanded to be *strictly observed*, declare, that " duties of " fatigue are to be performed *without any additional pay!*" Who shall decide, when doctors disagree?

In truth, it is inaccurate to say, that the men I employed were not paid. They received no additional pay in *money;*—but they received, what was equally valuable and gratifying to them, an additional pay of *rum;* and *that* to

* Pages 138 and 139

the full amount of the pecuniary allowance Sir Thomas Trigge proposed giving, of 9d. to each man *per* day.

I have, in self-defence, been led into a fuller consideration of these matters than was necessary. Permit me to call back to the mind of your Royal Highness, that the question at issue in my trial, was not with regard to the judgment, ability, skill, or talent displayed in my conduct; it was simply a question, whether I was a *criminal*, guilty of a punishable offence. As far as I was chargeable with weakness of understanding, or incapacity alone, I was an object of compassion, rather than of punishment. The *guilt* of offending against any known law, necessarily supposes *wilful* disobedience, implying moral turpitude, and a corrupt depravity of the heart, more than a deficiency of what are usually denominated qualities of the head.

Now, what do the Court Martial do? They cannot approve of my having ordered the work on the swamp, under all the circumstances of the case. But, they "*acquit* "me of the charge." This is demonstration, that, in the judgment of the Court, formed upon the evidence produced in their presence, there was in my conduct nothing *criminal*, nothing *guilty*, nothing *punishable*.

From what is previously mentioned of the received maxims in the proceeding, of the King's ordinary Courts, I should be strongly inclined to believe, that his Majesty, in strict propriety, and in conformity to the accustomed exercise of his prerogative, had no alternative in my case, but to approve the *acquittal* of the prisoner. But if he disapproved of it, and if there was no legal or constitutional bar to his acting upon that disapprobation, then the *only* other alternative for his Majesty to adopt, was, "*to order* "*the Court to sit again*, and to review their procedure and "judgment."—And if the Court persevered in their opinion, the invaluable freehold of a spotless moral character, became adjudged and confirmed to me by the sovereignty of the State, beyond the reach of human malice to invade, or of human power to destroy.

In what light then must every truly loyal subject, firmly attached to the person and government of his King, every friend to the laws and constitution of his country, every sincere lover of justice and humanity, regard this remark

of the Judge Advocate General, which gives forth to the world, and more immediately publishes through the whole army of the British empire, that his Majesty *condemned* a prisoner, whom a General Court Martial, convened by his Royal warrant to try, had, after sitting in judgment twenty-five days, and hearing evidence on the merits of the whole case, honourably *acquitted*?

It is the boast and pride of the inhabitants of this fortunate Island, that, after many struggles, we have obtained a firm establishment of laws, under a well limited monarchy. And it is the peculiar felicity of the passing age, that the people securely enjoy their precious civil and political rights, under the reign of a Prince, blessed with humane and mild dispositions, and revered by all classes of his subjects, as the model of royal and philosophic virtue. These propitious appearances of moderation in the Sovereign, can never be veiled or obscured by the free operation of the established principles of the constitution, which wisely provides, that, though the King regulates the whole government as the first mover, yet he does not appear in any of the disagreeable or invidious parts of it. Whenever the nation sees him personally engaged, says Sir William Blackstone, Vol. iv. c. 31. it is only in works of legislature, magnificence, or *compassion*. To him, therefore, the people look up as the fountain of nothing but bounty and *grace;* and these repeated acts of goodness, coming immediately from his own hand, endear the Sovereign to his subjects, and contribute more than any thing to root in their hearts that filial affection, and personal loyalty, which are the sure establishment of a prince.

Sure are the doctrines laid down by that great constitutional lawyer, and venerable judge, late the ornament, and still the honour of the sages of Westminster-Hall. From these may be gathered what would have been his sentiments upon the *remarks* in question. He would not have beheld, without virtuous concern and emotion, an attempt to impose upon the Sovereign the *rugged task* which the constitution had left to the courts of law; and to convert the *sceptre of mercy* into a rod of iron. Struck with horror and astonishment at the unheard-of practice, lately crept unobserved into the Judge Advocate's department, and

threatening, unless seasonably repressed, to unhinge our excellent constitution, to shake to its foundation the whole system of our laws, and to rob the prerogative of all its gracious and amiable attributes, he would naturally ask, who is this Judge Advocate? and whence his gigantic and monstrous power?

Were I qualified for making the profound legal researches, and producing the luminous explanations, to which the learning and genius of the Honourable Judge now mentioned, rendered him, with little effort or exertion, perfectly equal, I should hope very readily, and in few words, to resolve those questions, to the entire satisfaction of your Royal Highness. But, though destitute of such advantages, I flatter myself, that, even with the assistance of such information as has fallen within my short reach, I shall be able, with no great difficulty, to get at the truth.

There is nothing singular in the institution of the office of Judge Advocate. The King, it has been mentioned, is the person recognized by the constitution, as the legitimate prosecutor for all public offences, being the person injured in the eye of the law. And as he cannot exercise this office in person, he, of course, appoints, in his different Courts, officers, variously denominated, to act as prosecutors for his interest.

The seventh article of the sixteenth section of the Articles of War, 1804, bears; "The Judge Advocate Gene-"ral, or some person deputed by him, shall prosecute in "our name; and in all trials of offenders by General "Courts Martial, administer to each Member the follow-"ing oaths:"—Besides, being the public *prosecutor*, he is the clerk of the Court; and is bound to record their proceedings, and to preserve them for future production, when called for; as well as to give extracts, or copies, to the parties concerned, on paying for them.

In all the inferior Courts of my native country possessing criminal jurisdiction, there is an officer of the same description, under the denomination of *procurator fiscal*. And, as far as my opportunities of observing the administration of the criminal law of England enable me to

judge, I should consider the General and Deputy Judge Advocates in Courts Martial, to be precisely what the principal and under *Clerks of the Arraigns* are in the criminal Courts of common law.

It must be confessed, that Sir Charles Morgan, who has been very long in office, and was considered as a man of ability, has availed himself of all the known circumstances of the constitution of Courts Martial, to give an adventitious importance, and even a semblance of dignity, to his situation, somewhat above the pretensions of ingenuous modesty.* Presuming upon his experience, and knowledge of law, and possibly still more upon the diffidence and inexperience of the gentlemen occasionally called to a judicial situation in Courts Martial, he has for some years affected a pomp and formality of dress, and assumed an imposing attitude, by seating himself in the President's chair at the head of the bench, as if he actually were the head of the Court, with his deputy thrown behind, at a small table befitting the situation of clerk; and placing the real President of the Court, like a junior member, on his right hand, and the senior member on his left. I myself saw him so seated, at the ever memorable trial of Major General Burton, attired in a suit of black velvet, and powdered bag-wig, of formal cut,—" full of wise saws, and modern instances :—and so he played his part."

These courtly decorations would not perhaps have a very dazzling effect upon a permanent assembly, or any body of men constituted under such circumstances, as to afford opportunity of nearly observing them. But few officers sit often in Courts Martial, through the course of their lives; none *twice* in any one composed of the same members. Thus, being little practised in judicial business, and having no habits of thinking together, and of comparing and illustrating their mutual ideas and observations, the members, for the most part, at taking their seats in Court, feel themselves as strangers, where they see new modes and forms, and in which they are naturally disposed to acquiesce, during the transient period of their duty, without troubling themselves to inquire about the right or

* Pudor ingenuus.

propriety of things which they may never have occasion to see again.

But no affectation, or false glitter of exterior, can change the nature of the official situation;—Its real character, I am perfetly satisfied, is precisely such as I have described. And let it be considered how it would sound in the ears of the twelve Judges of England, to be told, that, after a prisoner, on his arraignment, had pleaded not guilty, and for his trial had put himself upon the country, which country the jury, (in my case the Court Martial) are, and which jury had returned a verdict of acquittal, the *clerk of arraigns* took upon himself to add in the record, a *remark*, suggested, *by his own account*, in consequence of a private audience of his Majesty, obtained in *the absence* and *without the knowledge* of either jury or party, and which remark he had the power of recalling at pleasure, effectually REVERSING the verdict of *acquittal*, and AWARDING a verdict of *guilty*, pursuant to which the prisoner *suffered punishment*? It would be difficult to figure a more flagrant case; and I should have been apt to question the possibility of its existence, had not woeful experience cured my incredulity.

The acknowledged absurdity of supposing the King to sit in judgment in prosecutions for offences, arises, as before noticed, from his legal capacity of *prosecutor*. This capacity, as exercised in practice, is little else than a *fictitio juris*. But the Judge Advocate is the real and actual prosecutor in person. The King can do no wrong, but it may be, that the Judge Advocate can do a great deal. The King can exercise the benevolent gracious virtues of clemency, mercy, pardon. The Judge Advocate can only exert the rigours and display the terrors of the law. And yet, this grim and unpitying officer, is supposed to be invested with a judicial power, which the constitution, from prudent regard to the welfare of the subject, judged it unsafe to lodge in the crown.

I can have no occasion to point out to your Royal Highness, the consequences to which the power contended for would immediately lead. If the office of Judge Advocate, as his pretensions necessarily imply, is *ministerial*, the province of all others the least compatible with it in a free

constitution, is that of a Judge. In times of the English history, which present to the reader of the present day, a striking contrast with those in which he lives, privy-counsellors exercised an extensive judicial power. They were found, says the great author of the Commentaries, above quoted, "to be inclined to pronounce that for law, which "was most agreeable to the prince." The Court of Star-chamber was abolished, but too late to prevent the dreadful effects which such an institution was calculated to produce.

Viewing the Judge Advocate, however, solely in the light of a prosecutor, it seems a contradiction to common sense, that he should possess any power of interference, far less an absolute controul over the decisions of the Court. The existence of such a power, may truly be said to be incompatible with the existence of a Court Martial; for no sentence of such Court would be effectual, or allowed to be carried into execution, but such as was perfectly agreeable to the prosecutor. In a little time, he might come to dictate the sentence for the president to sign, at the meeting of the Court, and before trial. And it would be but a step further, to dispense with the attendance of the members altogether; which, to say the truth, would be less disagreeable, less insulting to the feelings, less derogatory to the dignity, and less degrading to the characters of an honourable set of gentlemen, and General Officers, than, at the conclusion of a laborious and painful stretch of attention, and attendance in Court, for twenty-five days together, to be told, that their solemn decision, which they had been assembled by his Majesty, under authority of Parliament, to pronounce, was no better than a bit of waste paper; in as much as the prosecutor would, in the teeth of it, *take upon himself* to pass sentence of condemnation upon the prisoner, to be carried into execution, by the Commander in Chief inflicting the punishment.

Without meaning to insinuate any thing disrespectful to Sir Charles Morgan, I profess myself unable to refuse my decided preference of the mode of trial by a general Court Martial, *more majorum*, to the modern process of *remark* by the Judge Advocate General. It has been well observed, that, next to doing right, the great object in

the administration of public justice, should be to give public satisfaction. But this object can never be attained by means of *private* underhand proceedings, from all knowledge of which the principal party concerned is excluded, and from which, as from a dark frowning cloud, a sentence of *guilty* suddenly bursts, deciding the fate of the prisoner with a celerity, and a violence, resembling too much the frightful expedients employed under the meridians of despotism, to destroy all who have the misfortune to become obnoxious to the capricious fury of any subaltern tool of power.

The trial by Court Martial in military cases, I have said, is truly the trial by jury; that bulwark of the liberties of Englishmen, secured to them by the Great Charter: and few circumstances perhaps have occurred in the present day, more remarkable than this; that a British officer has found it necessary to assert, and vindicate from encroachment and violation, his native right of trial by his peers, *(mirabile dictu)* without effect!—This is indeed an awful circumstance, and while it must kindle in every loyal breast a patriotic enthusiasm for preserving the purity of the laws and the integrity of the constitution, it cannot fail to press home to the heart of every man who loves his country, a just sense of the importance of ever bearing in mind, this instructive and prophetic lesson of high authority: "The liberties of England cannot but subsist, as long as "the *trial by jury*, this *palladium*, remains sacred and inviolate not only from all open attacks, (which none will be "so hardy as to make,) but also from all *secret machinations*, "which may sap and undermine it, *by introducing new and* "*arbitrary methods of trial.*"

My case must surely be singular, which places me in the situation of an advocate called upon to plead in defence of the trial by jury. But though *necessity* is my apology thus far, I am aware that I can have no excuse of that nature for troubling your Royal Highness with a long argument in such a cause. What I have to observe further, may be drawn within a narrow compass.

One of the essential, and most important qualities in the character of a person exercising a judicial function, is independence. And it is the glory of the present reign, that

one of the first acts of your Royal Father, upon his accession to the Crown, had for its object the maintaining and securing of the dignity and independent situations of the Judges.* That salutary Act, one of the noblest improvements of our civil establishment, was passed at the earnest recommendation of the King himself from the throne; on which auspicious occasion, his Majesty was pleased to declare, that he looked upon the *independence* and *uprightness* of the Judges, as "essential to the impartial administration "of justice; as one of the best securities of the rights and "liberties of his subjects; and as most conducive to the "honour of the Crown."—Independence, in the sense of this declaration, comprehends not merely the vulgar independence consisting in affluence, or abundance of wealth, but also that purity, elevation, and firmness of mind, which renders a man incapable of deviating from the line of moral rectitude that his judgment approves. And I have no wish to dispute, that the former may, to a certain degree, be subservient to the latter.

It is to be expected, that the person appointed to the office of Judge Advocate General, will always be a man in easy circumstances, and possessing reputation for ability, and application to business. But considering by what interest, for what immediate purpose, and upon the exaction of what pledge for the general line of conduct to be pursued, his appointment is likely to be procured, I do not know whether the situation of that officer is such as may truly be pronounced perfectly independent. But I readily admit, that it is not from the head of this department that the most formidable instances of malversation are to be apprehended. The restraints of self-respect, of regard to public opinion, and consideration of responsibility, are, in general, powerful safe-guards of the conduct of the ostensible chief in office. But all the world knows, that the execution of the official business in detail, is intrusted to an inferior set of people, upon whom there is less certainty of the above restraints having an equal degree of operation: And if the Judge Advocate General should be a man of some political interest, and occupied with the proceedings in Parliament, or stricken in years, or valetudinary, the conduct of his official department must unavoidably devolve

* 1 George III. c. 23.

upon his Deputy, and the clerks of the office. Whenever things come into this situation, it is impossible to deny, that some danger of mismanagement may ensue from this, that the nature of the institution is materially changed for the time; an office formerly adapted to proceed with a head, being now carried on without a head. The history of the world proves, that inferior agents never err by failing to act up to the full extent of their commission; and any exception in the individual characters connected with the office in question, cannot affect a rule which ought to be established upon general principles. In this view, I cannot dissemble my genuine sentiments. I must confess, that were the fate of every officer in his Majesty's service made to depend upon decisions to be issued from the department of the Judge Advocate General, I neither could repose the same implicit confidence in the wise and impartial administration of military law, that I have hitherto done, nor feel the same veneration for the constitution and government of the state, which I have hitherto entertained.

The constitution of a General Court Martial, composed of officers assembled for the public trial of a brother officer, has every claim to the highest confidence. Beside the provisions of the State, and their patrimonial fortunes, by which their independence, in respect to external circumstances, is ensured; their education as gentlemen, their refined sense of honour; in many the pride of birth, and in all the *esprit de corps* abhorrent even of the stain of *suspicion* of character, are motives of supreme influence, which must operate as irresistible incentives to their pursuing that line of *uprightness* in their judicial conduct, which his Majesty has justly declared to be, "one of the best se-"curities of the rights and liberties of his subjects, and "most conducive to the honour of his crown." These considerations are not a little strengthened by the publicity of every step of the proceedings of a Court Martial. *They* recognize no stolen interview with the Sovereign—no *ex parte* consultation with the Commander in Chief. *They* hear the evidence on both sides, in the face of the sun, and before the view of the public. *They* can neither do wrong without public censure, nor right without public applause. *Their* decisions, therefore, can hardly ever be sup-

posed to disappoint the expectations of the disinterested many, or to shock the feelings of the interested few; nor consequently, to fail in producing universal content and satisfaction.

Such, however, is the provident regard, and such the anxious provisions of the Legislature, for the ends and purposes of justice, that even such honourable persons as, in the ordinary course, must be members of Courts Martial, are ordered to be *solemnly sworn* upon the Holy Evangelists, to discharge their duty uprightly and faithfully. In conformity to the direction of Parliament, expressed in the Mutiny Act (§ 18, edit. 1804), every member of my Court Martial took the following oath: "I shall well and *truly* "*try and determine*, according to the evidence, in the mat- "ter now before me:

"So help me, God."

And also the following oath:

"I do swear, that I will *duly administer justice*, according "to the Rules and Articles for the better government of "his Majesty's forces, and according to an Act of Parlia- "ment now in force, for the punishment of Mutiny and "Desertion, and other crimes therein mentioned, *without* "*partiality, favour, or affection*; and if any doubt shall "arise, which is not explained by the said Articles or Act "of Parliament, according to my conscience, the best of "my understanding, and the custom of war in the like "cases, &c."

Now, I believe, your Royal Highness will require no better evidence, that the Judge Advocate was not meant to have an ordinary vote, far less a controuling power in the proceedings of Courts Martial, than the tenor of *his* official oath, compared with that of the Members of the Court just now recited. The Judge Advocate simply swears, "I "will not, upon any account, at any time whatsoever, *dis-* "*close or discover the vote or opinion of any particular mem-* "*ber of the Court Martial*, unless required to give evidence "thereof, as a witness by a Court of Justice,"—It is not so much as supposed by this oath, that the Judge Advocate has any right to *try*, to *determine*, or to *administer justice*, according to the Mutiny Act, in any case where he may officiate. What a monstrous supposition, then, would it

be, that this person, with all his other comparative disadvantages, should, without being at all bound by the obligation of an oath, possess a discretionary power of reversing the sentences pronounced, after the fullest evidence obtained, and after the most mature deliberation, by the Judges upon their oaths?

The observation just made, is of general application. But there was something particular in my case. Neither the Judge Advocate General, nor his Deputy, officiated, or attended the Court on any one day of my trial. Mr Daniell alone was the Judge Advocate upon that occasion. He alone took the official oath, as above; performed the whole of the official duty, to the last revisal of the proceedings, when they were regularly authenticated by the signature of the noble President, and his own. It is perhaps immaterial, though literally true, to state, that the existing result was totally unexpected by that Learned Gentleman. But it is material to observe, and it does appear not a little extraordinary, that Sir Charles Morgan, or his Deputy, neither of whom, on this occasion, acted any official part whatever, from the commencement to the conclusion of the trial, or was bound *by any oath* to good behaviour, should have snatched the essential part of the business, if belonging to the Judge Advocate's department at all, out of the hands of Mr Daniell; and, without taking the oath *necessary*, by parliamentary enactment, *to qualify a Judge Advocate to act in any case*, should, with no better title than that of any stranger, have made, as is supposed, an official report to his Majesty, and then have issued the supposed authoritative remarks, upon the faith of which your Royal Highness has held yourself warranted, in effect, to annul the decision of the General Court Martial.

This, most assuredly, is a very strong case, and all the world must agree, that it would require good evidence to satisfy an impartial mind, that the *remarker's* candour, love of justice, and *independent* spirit alone, dictated his acrimonious and unfounded censures of my conduct, with relation to matters comparatively trivial, venial, or indifferent, while he suppressed all notice of the most enormous crimes, committed with a view to effect the ruin of an individual, as well as the most gross frauds on government,

and embezzlements of the public money. It would be a serious evil indeed, were a remarker of that description to be held the accredited organ of the Executive Power in this most important department of administration. Even in cases of the lenient and acceptable exercise of the prerogative in pardoning, it is a general rule, that wherever it may reasonably be presumed the King is deceived, the pardon is void. And therefore, any suppression of truth, or suggestion of falsehood, in a charter of pardon, will vitiate the whole; because the King was misinformed. With what additional force must this principle operate in cases where the Sovereign is advised to rise in awful and clouded majesty, to inflict severities? One of the great advantages which monarchy is generally acknowledged to possess above any other form of government, is, that there is a magistrate, who has it in his power to extend mercy, wherever he thinks it is deserved; and who, to use the words of the late Honourable Judge, frequently referred to, "holds a "*court of equity* in his own breast, to soften the rigour of "the general law, in such criminal cases as merit an ex-"emption from punishment." To that court of equity, then, let me appeal from the remarks of the Judge Advocate. Let me state the artifices employed to misinform and to mislead that court, by misrepresenting the judicial proceedings, and by arbitrarily assuming, or suppressing essential facts. More especially, let me call to recollection this distinguishing circumstance of my case, not visible in the remarks, that in the prosecution where I lately stood a prisoner at the bar of a General Court Martial, the fortune, rank, and character—and, I may add, the life of a British officer, were attempted to be *falsely sworn away*—and having given this specimen of the *accusing* spirit, let me pray for such judgment upon myself, as the High Chancery, to which I appeal, is accustomed to award in behalf of persecuted innocence.

I have no reason to believe that any predilection was entertained for the prosecutor personally. I rather think it probable, that his conduct might be the subject of reprehension, except in as far as he was deemed a convenient instrument in the prosecution. If my plea has any force, it derives it all from the general grounds on which it pro-

ceeds, and must be equally applicable to all future cases of the same kind, as to the present, without any personal reference whatsoever. On these grounds, I can have no difficulty in maintaining, that the office of Judge Advocate, in its nature, and as exercised in practice, is totally exclusive of any just or expedient interference by that officer with the decisions of Courts Martial.

From the proceedings in the remarkable case of Major-General Burton above mentioned, it would appear to be no unusual thing for the Judge Advocate General, pending a trial before a General Court Martial, to converse in private with your Royal Highness upon the subject, and with respect to the progress made in it.—These proceedings shew, that Lieutenant-Colonel Cooke, who conducted the action, as private prosecutor, with the greatest delicacy and propriety, had not intended to call any farther evidence after the adjournment of the Court, on Friday the 6th January, 1804.—But, in the course of that day, after the adjournment, the Judge Advocate General, having had occasion to see, and inform your Royal Highness of what passed in Court, as it appears in the minutes of the proceedings of that day; you then noticed, that a letter which you had received from Major-General Burton, expressly avowed his having sent a challenge to, and having had a duel with Captain King; and as that letter was not of a private or confidential nature, but on the contrary, such as might have been laid before the King, you not only thought it proper, but felt it your duty to put the Court in possession of it; and added, that you should, for that purpose, give your attendance at the sitting of the Court the next day; of which circumstance the Judge Advocate General informed Lieutenant-Colonel Cooke the next morning, adding, that he was at liberty to propose your Royal Highness as a witness.

Accordingly, on Saturday the 7th January, your Royal Highness, on being sworn, produced to the Court, Major General Burton's letter above alluded to, with another letter from that officer to Lieutenant General Prince William Frederic, and a relative paper addressed to Major-General Burton, by Major R. Hamilton, Aid-de-camp to the Prince.

Lieutenant Colonel Cooke had no other evidence to produce *. The result of the trial is sufficiently known.

Here was a proceeding of the Judge Advocate in his character of prosecutor. Whether it was perfectly correct or not I presume not to say; but it is supposed to have fully answered its purpose; in as far as the evidence of your Royal Highness (I speak only from report) is generally understood to have proved decisive of the issue. The important consideration, however, remains, that this public prosecutor, who appears so active and dextrous in procuring evidence in order to the prisoner's conviction, is the very officer who, when that fails, is equally busy in procuring *remarks* in order to his punishment.

Were abuse ever to become prevalent in that department; and, in reasoning upon general principles, it is allowable to reason upon the possibility of such an event, military men might bid adieu to that inestimable blessing, the faithful distribution of justice. In Courts Martial, the judges hear the evidence in presence of the parties, and announce the result of their deliberations upon any contested fact, or point of law, that may occur in the course of the trial, openly, in the public place of their assembly, to which all who choose have free access. The system of process and sentence *by remark*, as previously observed, is the reverse of all this. If the efficient administration of that system were ever to be tainted with corruption, or even with suspicion, by falling into vulgar or unclean hands, justice might become an article of commerce, and the high coloured scenes of office-solicitation, which now only glow in the gay paintings of poetic fancy and fiction, might rise into representation upon the stage of real life.

I hope to be pardoned for observing here, that the practice of *naval* Courts Martial appears to be formed more closely than that of the military, upon the model of the civil courts, and may, on that account, be considered as preferable.—In the navy, all judgments of Courts Martial are read aloud in open court, before the prisoner and audience, all the members being present; after which, the court is dissolved. No inquisitorial dungeon system of

* See the printed Copy of the Proceedings.

remark upon their decisions is tolerated; and consequently, no violent outrage against law and justice, can occur in the records of their proceedings. The reasonableness and propriety, the impartial and substantial justice, conspicuous in such of their decisions as have fallen under my observation, contribute not a little to fortify my opinion of the superiority of the constitution of the naval, to that of the military Courts Martial, in this respect particularly, that the decisions of the former are not liable to be reversed or annulled by the secret intrigues of their clerk.

I shall beg leave to give two instances; one of a date some years distant; the other recent, both equally well known.

The first is the decision upon the charges exhibited by Sir Hugh Palliser, against the Honourable Admiral Keppel, which is as follows:

February 11th, 1779.

The Court, pursuant to an order of the Lords Commissioners of the Admiralty, dated the 31st of December, 1778, and directed to Sir Thomas Pye, proceeded to enquire into a charge exhibited by Vice Admiral Sir Hugh Palliser, against the Hon. Augustus Keppel, for misconduct and neglect of duty on the 27th and 28th of July, 1778, in sundry instances, as mentioned in a paper which accompanied the said order; and to try him for the same; and the Court having heard the evidence, and the prisoner's defence, and maturely and seriously considered the whole, are of opinion, that *the charge is malicious* and *ill founded*: it having appeared that the said Admiral, so far from having, by misconduct and neglect of duty, on the days therein alluded to, lost opportunity of rendering essential service to the state, and thereby tarnished the honour of the British navy, behaved as became a judicious, brave, and experienced officer: The Court do therefore unanimously and honourably acquit the said Admiral Augustus Keppel of the several articles contained in the charge against him; and he is hereby fully and honourably acquitted accordingly.

(Signed) THOMAS PYE,
&c. &c. &c.

GEORGE JACKSON, *Judge Advocate.*

The Address of Sir Thomas Pye, President, on delivering the Admiral his sword.

"ADMIRAL KEPPEL, It is no small pleasure to me, to "receive the commands of the Court I have the honour "to preside at, that in delivering you your sword, I am to "congratulate you on its being restored to you with so "much honour; hoping ere long you will be called forth "by your Sovereign to draw it once more in defence of "your country."

The next is the case of Admiral Duckworth, in which the following decision was given:

27th April, 1805.

"The Court is of opinion, that the charges have not "been proved against the said Vice Admiral Sir J. T. "Duckworth, K. B. but that they are gross, scandalous, "malicious, shameful, and highly subversive of the disci- "pline and good government of the service; and doth "adjudge him to be most fully and honourably acquitted "of all and every part thereof: and the said Vice Admi- "ral Sir J. T. Duckworth is hereby most fully and honour- "ably acquitted of all and every part thereof."

The highly respectable Judges, upon these occasions, would not have patiently borne any remarks by their Judge Advocates upon their decisions. And I never heard an instance of any naval Judge Advocate, presuming to disturb the course of justice, legally marked and defined by judicial determination.

In the different reports of the proceedings of military Courts Martial, held throughout the *country* of England, as far as my information reaches, the decisions in like manner have regularly been carried into effect, according to law; and have been attended with the consequences, which the justice of the case, and established usage, imperiously required.

The case of Lieutenant Colonel Gillespie is well known to your Royal Highness. He, like myself, was tried on

charges preferred by an inferior officer; and, like myself, was honourably acquitted. Your Royal Highness, in consequence, was pleased to give orders to signify to his accuser, though it was not suspected that the accusation had been supported by perjury, that his Majesty had no farther occasion for his services.

Another instance of the sentence of a General Court Martial held in the *country*, recently occurred in the case, where Colonel Richard Stewart, of the 43d regiment of foot, was tried upon two charges exhibited against him, by Captain Jekyll of the same regiment. The Court was held at Sandgate in Kent, on the 27th of June last; and the result was a judgment finding, "That he, the aforesaid "Colonel Richard Stewart, is not guilty of either of the "charges; and the Court do most fully and most honour- "ably acquit him.—The Court cannot pass, without obser- "vation, the malicious and groundless accusations, that have "been produced by Captain Jekyll, against an officer whose "character has, during a long period of service, been so "irreproachable as Colonel Stewart's; and the Court do "unanimously declare, that the conduct of Captain Jekyll, "in endeavouring to *falsely calumniate* the character of his "*commanding officer*, is most highly *injurious to the good of* "*the service.*"

This decision was approved of by his Majesty; and although there was not insinuated against the prosecutor, or any of his witnesses, either perjury, subornation of evidence, connivance or implication in embezzlement of public money, certifying false returns, or other misdemeanors; His Majesty was pleased to direct, "that it be intimated "to the said Captain Jekyll, that His Majesty has no far- "ther occasion for his service, as a captain in the 43d (or "Monmouthshire) regiment."

The foregoing cases sufficiently ascertain the natural direction of the unrestrained course of the administration of justice by General Courts Martial. And the only exceptions to the general practice; the only cases to be found in the records of the army, in which the decisions of Courts Martial have been resisted, paralysed, or upset by superadded remarks of the Judge Advocate, if I am well-informed, are those which have been tried in London, or

its immediate vicinity, within the sphere of Sir Charles Morgan's presidency. If a man tried capitally by a jury, at the Old Bailey, were to be told, that his life did not depend upon the *verdict*, but upon such *remark* as the *prosecutor* might think fit to make on it, he would naturally exclaim in despair,—that he had only to prepare for execution! But a despotism so horrible could not be endured for an hour; and it is inconceivable, how any thing of the kind could have been first introduced into any department of a well-governed state, unless under disguise and concealment; or have been permitted to subsist, and grow to its present formidable height, unless by very slow and imperceptible degrees.

> "Parva metu primo; mox sese adtollit in auras,
> "Ingreditorque solo, et caput inter nubila condit *."

Happily it is still not too late to destroy the monster. The usurpation has not yet been legalized, nor even sanctioned by antiquity. Sir Charles Morgan himself was not very young in office, when the *first* instance occurred in this country of the proceedings of a Court Martial being officially laid before his Majesty by the Judge Advocate General. So late as the days of Lord Barrington; and uniformly, in preceding times, such proceedings, on being closed and authenticated by the signatures of the President and Clerk, (Judge Advocate,) were sent to the War-office, whence they were transmitted to His Majesty by the Secretary at War. And no such thing was ever heard of, or dreamt to be possible, as the sentence of the Court, approved by His Majesty, being remitted with any remark upon it by any officer, or person in any situation whatever.

I think the common account abundantly probable, that Lord Barrington, partly from the pressure of other business, and partly from a natural love of ease, was pleased, without any formal resignation of the office, to allow Sir Charles Morgan to relieve him of the duty in question, at

> *————Great ill from small beginnings grows—
> Soon grows the pigmy to gigantic size:
> His feet on earth, his forehead in the skies.

first perhaps occasionally, and afterwards constantly. For awhile no other alteration took place in the established practice; and the same appearances being kept up, it might well be, and most likely was supposed, that matters continued to proceed in the ancient legitimate line. In process of time, however, as the new order of things acquired stability, the veil of meek forbearance was withdrawn; and the sequel has furnished one of the strongest cases that ever existed, in illustration of the wisdom of the maxim, *principiis obsta.*

The act of injustice and cruelty which gives me a right to complain, would, if legal, suppose a power vested in the Judge Advocate General, more absolute and tyrannical than what any British Monarch, in the least glorious reigns, has been known to exercise: and, as already noticed, there is no saying where the evil is to stop, nor possibility of calculating the extent and various directions in which the mischievous consequences may spread. "Tyrants "(says a distinguished historian and philosopher of the "present age) seldom exceed the bounds of resentment, "of jealousy, or of fear. But the vile tools that are pro- "cured by servility to execute their purpose, in order to "ingratiate themselves, often out-run, in their affectation "of zeal, what tyranny, or cowardice itself, could not sug- "gest or perpetrate." The same author feelingly describes the horrors of a corrupt or arbitrary administration of law, and the calamitous state of society, where a power could exist capable of overleaping or annihilating the regular judicial institutions; and by which deliberate murders, under the pretence of the execution of justice, were ordered without any formalities of trial.—The British reader feels relieved in reflecting, that the scenes of these enormities lay far distant from his native land of regulated freedom, of humanity, and moderation; where a gracious Prince, of the House of Brunswick, gently sways the sceptre;—that they lay at Rome, in the reign of Caligula.

The British constitution, for the best and wisest purposes, leaves to the Judges of the different courts of law, to inflict severities: while, as I have mentioned, it reserves to the Sovereign the more amiable office of granting in-

dulgences, of making concessions of grace, or of performing acts of mercy. It is no slight objection to the *remarks* in question, that, by coupling them with His Majesty's name, they are made to assume the semblance of exertions of prerogative. This merits very serious consideration. His Majesty cannot alter the *sentences* of his courts of law; yet, where they *condemn*, he may *pardon*. But who ever heard, that where a court of law *acquitted*, his Majesty *condemned*? This, however, is literally what the remark supposes to have happened in my case. By my Judges, in the discharge of their rugged task, I am hailed with the most gratifying expressions of approbation, and the most honourable testimonies to my character and conduct:—while not a gleam of benignity, or of lenity,—no, nor the faintest glimmering ray of compassion, is to be discerned in any emanation from the fountain of mercy.

The principles of the constitution recognize no display or exercise of the prerogative, under circumstances so little fitted, as those now mentioned, to enforce the commendable respect, fidelity, and affection, which accompany the sentiments of loyalty and duty entertained by His Majesty's subjects at large. Britons, justly renowned as loyal, brave, and free, have been accustomed to salute their Sovereign with the endearing title of "The Father of his People;" and to approach his throne with humble protestations and assurances, that he "reigns in their hearts." And they have not been disappointed in their expectations of receiving, in return for their duties of allegiance, protection and security under the established laws, to be administered in mercy, pursuant to His Majesty's promise in his coronation oath. Standing in this filial relation, the subject who, from the frailty of his nature, has exposed himself to legal vengeance, naturally looks up with a suppliant eye to the Royal seat of paternal tenderness and compassion. Although his guilt should be of such a dye as almost to exclude the hope of pardon, yet he knows that every mitigation of his case will be listened to; and he has the sure prospect, that he will be treated less with the inflexible sternness of an offended magistrate, than with the reluctant severity of a father.

By such bonds are the Sovereign and the subject united and knit in mutual amity and confidence; and their reciprocal duties are discharged with the cordiality and cheerfulness of voluntary offerings. To the excellence of their justly-admired and envied constitution, Britons owe this happy state. But the event which has given rise to these reflections, tends directly to fix upon the British Sovereign a character completely the reverse of that with which the existing laws invest him; to deprive him of his attribute of *mercy*, the brightest jewel that adorns his Crown, and to erect in the heart of a free constitution, under which such rare and incomparable blessings are enjoyed, a species of tyranny, worse than any known to exist in those countries where licenced oppression and slavery prevail. In answer to the pretensions of the Judge Advocate, then, I will address him in the words of the Resolution of the English, which, I am confident, would be the no less firm Resolution of the Imperial Parliament: "We will not *innovate* the laws of England *."

The illustrious author of "The Spirit of Laws" has said, that the Constitution of England will perish; and in contemplating the subject of his melancholy prediction, he appears to seek a philosophic consolation in the reflection, that no human institution, how perfect soever, is destined to be perpetual.—"Have not Rome, Sparta, and Carthage "perished?"—But the existence of the usurpation which forms the chief subject of this letter, seems to have eluded the prophetic vision of that penetrating genius. Perhaps, he would have doubted the abstract possibility of the event; and have treated as chimerical the supposition, that the British Constitution—the first object of his generous admiration and encomium—the perfect model of practicable liberty, reared with so much skill, and cemented with so much blood, could ever be endangered—not by foreign invasion—not by domestic convulsion; nor by any great or signal calamity whatsoever—but by the single dash of a pen in the office of the Judge Advocate General.

But it ought to be remembered, that, in the course of human affairs, events of the greatest importance, and of

* Nolumus leges Angliæ mutare.

the most extensive public consequences, frequently take their origin from circumstances apparently trivial, and from causes which, in the commencement of their operation, are scarcely perceptible. Accordingly, the principle of the noble Resolution of the ancient Parliament of England, has been adopted, as the golden rule of practice, by the wisest and most virtuous Statesmen of every age and country, where a firm, a permanent, and a happy form of government has been established.—Impressed with these sentiments, what bosom beats not in the cause of the British Constitution, on recollecting the animated address put in the mouth of a true patriot, by a British statesman, who was himself also a consummate model of private worth, as well as of philosophical and elegant taste, genius, and learning?

" Remember, O my Friends! the laws, the rights,
" The GENEROUS PLAN of power delivered down
" From age to age, by your renown'd forefathers;
" So dearly bought—the price of so much blood.
" Oh, let it never perish in your hands!
" But piously transmit it to your children."

I have now, Sir, delivered to you freely, and at length, my sentiments upon a subject which, though of infinite general importance, I never should have considered myself as entitled to enter upon, otherwise than as an injured individual exercising his undoubted right to complain of the injustice done to him.

If, in the course of this letter, I have sometimes mixed with the defence of myself, an attack upon the conduct of an official department, it has been such only as was inseparably connected with the subject.—More particularly, in whatever has dropped from my pen respecting the Judge Advocate General, I am conscious of having been actuated neither by malice, nor by faction, nor by personal dislike. On the contrary, it has not been without a large mixture of concern and regret, that I have found myself constrained to state a variety of observations, which, from their weight, and immediate reference to his official situation, may excite a degree of personal uneasiness, where I sincerely wished to avoid every thing of the kind.

My sole motive in addressing your Royal Highness, on

the present occasion, was to bring under your view the essential facts, together with the observations and arguments warranted by these, to convince you of the cruel injury I have suffered, aggravated by what appears to me to have been, a gross violation of law, and a high breach of duty, committed in the act of inflicting it. I confess that I had not figured to myself the possibility of meeting with an injury of this nature; and I am sensible that the unexpected shock may have, in a good measure, unfitted me for so immediately stating and illustrating the merits of my complaint, with such force and clearness, as the great importance of the subject demanded.

I will not here revert to the principal subject of this letter, which, I am aware, will be proper matter of discussion before a great national tribunal.

I shall now conclude, with expressing my humble hopes, that your Royal Highness will be satisfied, from the states, and proofs I have produced, that, upon the acknowledged principles of law and justice, and in conformity to invariable constitutional practice, I was clearly and indisputably entitled, in consequence of the decision of my general Court Martial, approved by His Majesty, independently of the Royal pledge given by your gracious letter of 10th December, 1803, to be promoted to the rank of Major-General in the army.—I am,

With the most profound respect,
SIR,
Your Royal Highness's
Most obedient, and
Most humble Servant,
ANDREW COCHRANE JOHNSTONE.

Harley-Street, May 29, 1805.

AT

A GENERAL COURT MARTIAL,

HELD

At the Royal Hospital at Chelsea, on Friday the 1st day of March 1805, and continued by adjournments until Monday the 25th of March, by virtue of a Special Warrant from His Majesty, bearing date the 10th day of August 1804.

General CHARLES Earl of HARRINGTON, President.

General PETER CRAIG,
Lieutenant-General GEORGE HARRIS,
Major-General JOHN WHITELOCKE,
Major-General Honourable EDWARD FINCH,
Major-General Lord SOUTHAMPTON,
Major-General Sir JOHN STUART,
Major-General Honourable EDWARD PAGET,
Major-General BRENT SPENCER,
Brigadier-General WILLIAM HOUSTON,
Brigadier-General ANTHONY LEWIS LAYARD,
Brigadier-General FRANCIS CARRUTHERS,
Brigadier-General HENRY MONTRESOR,
Brigadier-General ALBERT GLEDSTANES,
Brigadier-General JAMES HAY,

GEORGE DANIEL,
Deputy Judge Advocate.

THE several members of the Court being duly sworn, and the Judge Advocate also sworn;

The Honourable ANDREW COCHRANE JOHNSTONE, late Colonel of the 8th West India Regiment, came prisoner before the Court, and the following charges were exhibited against him by Major JOHN GORDON, late Major of the said 8th West India regiment.

FIRST CHARGE.—Having contrary to his duty, and to the great injury of the service, in or about the month of October 1801, when he knew that the accounts of the regiment were in confusion, clandestinely obtained for his own use, from Richard Seward, Paymaster of the 8th West India regiment, by bill drawn upon the agent of the corps, and by him charged to the Paymaster's regimental account, the sum of Five Hundred Pounds sterling, being money due by Government to the corps, under the false pretence that he would write to the agent immediately to place the same to his own private account, and that it should not in any manner affect the accounts or credit of the Paymaster with the agent or public; and having afterwards falsely promised to the commanding officer to transfer his pay as Colonel to the Paymaster to liquidate the above sum of five hundred pounds, none of which engagements he performed, whereby the confusion of the accounts was encreased, and the Paymaster was deprived of the means of regularly paying the regiment. The accounts of the men were unsettled, and, as would appear, discontent was excited in the corps.

And having, in or about the months of March or April 1802, when he knew that the Paymaster was in arrear to the regiment, directed above One Hundred and Forty Pounds to be stopped from the Paymaster, out of the subsistence due to the regiment, under the false pretence that the same was justly due to him, whereby the difficulty of paying the regiment was encreased, contrary to his duty, and to the injury of the regiment and service.

SECOND CHARGE.—Having contrary to his duty, and

to the prejudice of the service, at times between the month of July, 1801, and the end of April, 1802, suffered the resident Paymasters, who were his secretaries, unwarrantably to retain, or neglect to issue regularly and agreeable to general orders, a part of the subsistence of the troops, under pretence that the same was not received from the deputy Paymaster general; and in particular, having suffered resident Paymaster Charles Kerr, who was his secretary, to retain, or unwarrantably to neglect to issue, under the above false pretence, in the months of March and April, 1802, immediately preceding the mutiny of the 8th West India regiment, sums of money due on account of subsistence, to that corps, to the amount of about One Thousand Pounds sterling, being nearly equal to two months pay of the regiment, whereby the men's balances were unpaid; and, as would appear, discontent and mutiny were excited among them. It further appears, that Colonel Andrew Cochrane Johnstone asserted, both in word and writing, a falsehood unbecoming his rank and the character of an officer, to vindicate Mr Kerr's conduct, in not issuing the money due to the regiment.

THIRD CHARGE.—Having employed, or directed to employ, soldiers of the 8th West India regiment in manual labour, on his own lands, and on other works, and neither paid nor directed them to be paid for their labour; contrary to his duty, and to the injury of the service. In particular, having repeatedly so employed, and not paid for their labour, a considerable part of a detachment of recruits, belonging to the 8th West India regiment, consisting of about seventy or eighty men, while quartered at Roseau, the residence of Colonel Andrew Cochrane Johnstone, for some months immediately preceding the month of September, 1801, and having, although under his immediate inspection, totally neglected to have them instructed and trained to discipline, as his duty and the good of the service required.

And having in the months of March and April, 1802, immediately preceding the mutiny of the 8th West India regiment, directed the regiment to be employed in cutting wood, and clearing some swampy ground in the

neighbourhood of Prince Rupert's, in the island of Dominica, with the view (as would appear) to convert the same to his own use; and having neither paid the men, nor directed them to be paid, for their labour, to the great injury of the service; as thereby, it appears, discontent and mutiny were excited in the regiment.

FOURTH CHARGE.—Having, in direct opposition to his duty, as commanding officer of the troops in Dominica, availed himself of his military power to violate the laws, and to infringe the rights and liberty of the subject, between the month of August, 1801, and the end of July, 1802. In particular, having, in violation of law, and of the rights of the subject, on or about the 14th day of December, 1801, caused James Ryrie, a civil inhabitant of the island of Dominique, to be illegally arrested by an armed military detachment, and to be confined in a military fort and guard-house; and having suffered the said James Ryrie to be insulted, beaten, and maltreated, by persons under his immediate influence and command, without taking steps to prevent the same, or to discover and bring to justice the authors of such outrages, or the person or persons who employed them.

And having further, in opposition to his duty as commanding officer, as aforesaid, and in violation of the laws, and the liberty of the subject, in or about the month of July, 1802, authorized and permitted his own menial servant, in his presence, to insult and threaten with a pistol, Mr Etienne La Caze, residing in the island of Dominica, and formerly a lieutenant in the Loyal Dominica regiment, and authorizing or permitting his servant forcibly to drag the said Etienne La Caze to Fort Younge, and to deliver him illegally a prisoner to the guard, and to have him there confined, and a centinel, with a drawn bayonet, placed over him. Those instances affording proof of abuse of military authority, and of conduct unbecoming an officer and a gentleman.

COLONEL JOHNSTONE admitted that he was, at the several periods stated in the charges, Colonel of the

late 8th West India regiment, and stated that he was then also Governor of the island of Dominica, and a Brigadier General in His Majesty's forces in the West Indies.

MAJOR GORDON, before he was sworn, and before he entered upon the proof in support of the charges, read a long paper, in order to explain the circumstances connected with these, and the nature of the evidence he was to produce; which he concluded with solemnly assuring the Court, "that he had been *called upon* to perform the duty of prosecutor, and that he was actuated by no personal motives of animosity towards the party accused." He further made the following declaration:— "I am *too sensible of the solemn obligation of an oath*, not "to feel an additional tie, when acting under its sanction, "to guard my mind against any feelings which may ope- "rate upon my testimony."

He then proceeded to adduce his proof, beginning with his own testimony, which, on being duly sworn, he delivered at great length on the matter of the several charges, in the successive stages of the trial.

After the evidence in support of the prosecution was closed, the prisoner, Colonel Johnstone, opened his defence in the following address to the Court.

My Lord President, and Gentlemen of the Court,

AFTER most part of my life spent in the service of my country, I am now arraigned at your bar, for having deeply injured that service; for having excited mutiny in the regiment of which I was the Colonel; and for having committed various other offences, degrading to the military profession, and unbecoming the character of a gentleman.

Painful as it is to me, and as it must be to every man, how conscious soever of innocence, who values reputation, to suffer a moment in the good opinion of the world

am sensible, that, in my situation, thus far described, there is little that I ought to deem particular hardship; for every British officer, be his rank, his service, or his fame ever so distinguished, is liable to be impeached in the face of his country, and compelled to clear himself by the ordeal of a Court-Martial.

On farther examination of my case, however, circumstances, if I mistake not, will disclose themselves, which distinguish it from most others that have fallen under the cognizance of a Court-Martial.

The gentleman from whom the present accusation originated, and at whose instance I am here prosecuted, was the Major of my regiment, and the commanding officer during the very period of my imputed misconduct.—To him, in that period, belonged the immediate inspection, superintendence, and ordinary controul of the accounts, and of every department of regimental economy and discipline. If I really am the offender described by these charges, my accuser must have been an eye-witness, or fully apprised of my offences, at the time they were committed; he must have been the very first man to discover every violation of my duty, more especially that most heinous ingredient of his accusation,—my accession to the mutiny of my regiment. The duty which he owed to his king and country, therefore, surely called upon him imperiously, not to suffer the man, who had become a traitor to both, to escape the punishment he deserved. He was not to learn, that, by conniving at the *crime*, he rendered himself a party in the *guilt:* And every sentiment of justice, of humanity, and duty to the corps intrusted to his care, concurred in pressing him to make an immediate representation to the proper tribunal of my misconduct.

To any proceeding of that nature, however,—that is, to whatever was proper and natural to be done, by a person who *believed me guilty of what these charges impute to me*,—the conduct of my accuser was directly opposite. He was not merely silent as to any ground of *censure*;—he was warm in his encomiums. Recently after the mutiny, he corresponded with me by letters, conceived in terms of much friendship and respect; and in the subse-

quent distressing scenes of trial and execution of the unhappy mutineers, whose blood, it seems, he then knew was on my head, he scrupled not to renew his professions of regard; to express for me the *highest esteem*; to court the continuance of my friendship; and even to solicit favours for his own nearest relations.

I should lay myself extremely open to the charge of injustice, were I to insinuate a doubt of my accuser's sincerity in making those professions. His regard and sense of obligation were placed, by his letters, upon the solid ground of *favours received*, to which I, as the giver, could not be a stranger: And the tribute of esteem paid to my character, was perfectly consistent with other declarations, made by my accuser about the same time, without my knowledge, and on very solemn occasions. His private testimony in my favour, was subsequent to public judicial investigations, and proofs respecting the very matter of the present charges.

In his letter to me, dated at Fort Royal, Martinique, 26th April 1802, he mentions, that the sentence of a Court-Martial had been approved of by the Commander in Chief of the forces, whereby seven persons had been convicted as guilty of the mutiny, which took place on the 9th of that month. He adds, that a Court of Inquiry was to be held in that island.

His next letter to me is dated, Barbadoes, 31st May 1802; in which he acquaints me, that two Courts of Inquiry had been held there; one, relating to the *mutiny*, and the other to the *accounts of the regiment*; in consequence of which, a general Court-Martial was to be assembled on the 6th of June following, for the trial of fifteen persons, accused of having been concerned in the mutiny. I received three other letters from him, dated at Barbadoes, on the 1st, 23d, and 29th of June, acquainting me with the result of the proceedings in those several Courts.

With respect to the inquiry concerning the accounts, he stated, that there appeared to have been some irregularity; and he charged the Paymaster, Seward, with incapacity and ignorance; but he added, that the men had

nevertheless been *regularly supplied with clothing, and necessaries of every description;* and that, as early as the 31st May 1802, the men were settled with and paid up to the 24th of that month.

Upon the subject of the general Court-Martial, he reported to me, by his letter of the 29th June, that so far from there having been any cause of discontent, or mutiny, felt by the corps; on the contrary, says my accuser, "there was only *one* fellow of the whole, who attempted "to make the least complaint against his treatment in the "regiment. He aimed particularly at Mr. Mackay: I "was under the necessity of making a reply; which "*proved so completely satisfactory to the Court,* that they "deemed the evidence I proposed adducing totally un-"necessary."

It was not pretended, that even that solitary voice of discontent was raised against *me;* or that the tongue of calumny was heard, even in a single instance, to articulate *my* name.

I do not wish to anticipate the evidence which I am to produce. But I beg leave to put it to the candour and good sense of this Honourable Court, whether the man, who, when on the spot where the unfortunate event happened, recently after its date, and in the full knowledge of all the circumstances attending it, wrote in the decisive terms you have just now heard, is entitled to the credit of sincerity in bringing forward the present charges?

In this respect, my case is somewhat peculiar, that I am unable to find even the excuse of *sincerity* for my accuser.

But I cannot stop here;—for with respect to the pecuniary concerns, and accounts of my regiment, which make so prominent a figure in this prosecution, unhappily for the cause of the prosecutor, he himself lies not merely under an *imputation,* but under the *sentence of a general Court-Martial,* finding that he has been *very irregular;* that he has been *guilty of culpable neglect,* and has *subjected himself to censure.*

Thus situated, he does not now come into Court with perfectly clean hands. Neither does the complaint, made

in his late defence, that I had given him umbrage, and had injuriously aspersed his character before leaving the West Indies, tend to evince the purity of his motives. His resentment, however, though *secretly* active, rancorous, and vindictive, was endeavoured to be masked and concealed from public view; and it was not till after having been warmed by the discussion of my charges before a general Court-Martial, and stung by its sentence, that his hostility broke forth in the present mode of recrimination.

It is remarkable too, that when my accuser was called upon to state specifically, the grounds on which he had signified his intention to bring his prosecution, he gave in a statement, pointedly and explicitly averring, that the facts charged, were the causes of the mutiny. But, afterwards, when he found that he was seriously to follow out his accusation, as a prosecutor and *a witness*, before a general Court-Martial, he shrunk from the broad statement first exhibited by him; and, quitting positive averment, the only ground *becoming* a *prosecutor*, or *tenable* by a *witness*, he endeavoured to shelter himself behind supposition, presumption, or conjecture.

These circumstances shew, that any reports to my prejudice, circulated by the prosecutor out of doors, were not entitled to implicit belief. At any rate, I could not help expecting, that as long as such reports were unvouched and uninvestigated, no personal consequence would attach upon me; particularly none, by which my fortune, my military rank, and character, were to suffer.

But in this expectation I have been disappointed; and the consequences form the most remarkable peculiarity of my situation, as a prisoner at your bar.

At the time of the army promotion, which appeared in the London Gazette, on Saturday the 1st of October 1803, I was entitled, by my seniority as a Colonel, to the rank of Major-General. In that list of promotions my name was omitted. Sensible that I should expose to misrepresentation my intention and motives, though founded in sentiments of the most dutiful respect and submission, if I observed, in silence, that public expres-

sion of disapprobation of my conduct, I took the liberty, on the 4th of that month, of addressing to the Commander in Chief a memorial, praying his Royal Highness to order an inquiry into my conduct; not doubting but that, when the same should be cleared up, his Majesty would be graciously pleased to place me in the rank of Major-General, according to my seniority as a Colonel in the army.

After an interval of some length, and, as your lordship will believe, of considerable anxiety, I had the honour of receiving a letter from the Commander in Chief, dated 10th of December 1803, in which his Royal Highness was graciously pleased to say, "In regard to your promotion "to the rank of Major-General, I must observe to you, "that it is an invariable rule in the service, not to include "in any general brevet promotion, an officer, whatever "may be his rank, *against whom there exist charges*, the "merits of which have not been decided.—Whenever "an investigation shall have taken place; and, should "the result prove favourable to you, there will not be any "difficulty in your recovering the rank to which your "seniority as Colonel entitles you."

Having, neither at this, nor at any former time, heard of any charges existing against me, I was at a loss in what manner to answer to the letter of the Commander in Chief; and though I repeatedly made known to his Royal Highness my respectful anxiety on the subject, yet it was not until the 25th of May 1804, that I received from Colonel Clinton, an answer to a letter which I had taken the liberty of addressing to his Royal Highness, upon the 26th of that month, in which he writes; "I have the Com- "mander in Chief's commands, to acknowledge the re- "ceipt of your letter of the 26th instant, addressed to "his Royal Highness, and to acquaint you, that *Major* "*Gordon*, having, from time to time, *transmitted letters*, "*and verbally made general accusations*, highly affecting "your character as an officer, whilst the 8th West India "Regiment was under your command in Dominica, his "Royal Highness felt it incumbent on him, as soon as "the proceedings against Major Gordon had been con-

"cluded, to call upon that officer to state, whether *he* "*meant* to bring forward any specific charges against you; "and Major Gordon, in answer, acquainted me, for his "Royal Highness's information, that *it was his intention* "to bring forward such charges."

I confess, my lord, I was unable to account for the proceedings I have just now related.—To me, who was ignorant of the true springs and causes which had put them in motion, their general aspect carried an appearance of harshness; at the same time that the whole were veiled under an impenetrable shade of obscurity and mystery.—I own, that I did humbly conceive myself to be aggrieved and injured—without having the means of tracing the source of the grievance, or the author of the injury.—I little suspected, that the letters, mentioned by Colonel Clinton to have been addressed by my accuser to him, for the information of the Commander in Chief, contained an attack upon myself, *foreign to the proper matter of his intended charges;* or, were of a description essentially different from that given of them in Colonel Clinton's letter to me just now quoted; that is, "highly affecting my character *as an officer*."

Having been refused permission to peruse those letters in the office of the Commander in Chief, previous to the trial of Major Gordon, I remained in total ignorance of their contents.

My astonishment, within these few days, will be imagined, when, in consequence of the permission of the Commander in Chief, communicated to me by his present secretary, Lieutenant Colonel Gordon, to peruse those letters at the office of his Royal Highness, I discovered, that Major Gordon, when in the full knowledge that he himself was charged with various culpable acts, had dared, in his correspondence with the department of his Royal Highness, to load me with calumny and slander, the most foul, the most false, the most malicious, and the most criminal, of which perhaps there ever occurred an example.

In one of his letters to Colonel Clinton, dated 4th April 1803, in which he avows his knowledge of my having preferred charges against him, which, he says, he would be *happy to meet;* he adds, as nearly as I can recollect his

words, "that it was not likely he would have an oppor-
"tunity, as I was afraid to face my exasperated creditors,
"whom I had *swindled* of their property, and had, by
"the latest accounts, retired to Guadaloupe, there mar-
"ried, and would most probably become a subject of the
"French government."

In another letter to Colonel Clinton, dated 31st May 1804, in answer to one which that officer had written, expressing the displeasure of the Commander in Chief at his conduct, in being so dilatory in bringing forward his charges against me, he expresses his regret at falling under that displeasure; promises to obey the orders of his Royal Highness immediately; but adds, that he is afraid of meeting with great difficulties from want of money; from his witnesses being abroad; and, particularly, from the difficulty of getting at the truth from those who had been my *minions* at Dominica, and who were still under my controul; that he hoped his Royal Highness would *assist him* with money, to carry on the prosecution, as he doubted not, but that it was *the wish* of his Royal Highness, that my conduct should be publicly exposed, *to justify the very proper measures of government which had been taken against me.*

I now clearly discerned the lurking and real cause of sufferings which I felt to be unmerited, and of what had appeared to me a systematic and inexplicable train of little less than persecution.

By the first of these letters, I am traduced and calumniated, not in my military capacity, or merely *as an officer.* The envenomed shaft is levelled at the vital part of my private character, as a member of civil society.—And, if the author is not guilty of a great crime, I ought, long before this day, to have stood a culprit at the bar of another tribunal.

At the date of this letter, I was in the West Indies, where my stay had been protracted, in the expectation, that Major Gordon would be ordered thither, to be tried on charges of high offences which I had there prepared againt him, and which he had found means, in spite of my remonstrances, to elude, by withdrawing from thence in October 1802.

Having *thus* got to this country before me, he chose to take the start of me here, not by shewing that he was an innocent man; nor, what will be particularly marked, by imputing to me one single article of the present charges, but by endeavouring to poison with calumny the ear of the Commander in Chief; by circulating injurious reports, and by attempting to set the prejudices of the public on his side, by holding up the person by whom he was to be brought to trial, as a *swindler*, as one who, when in a most honourable situation of high military trust, had abjured his sworn allegiance to the gracious sovereign under whom he held it, and become a subject of the French government.

At the date of the *second* of those letters, Major Gordon *had been tried* on my charges, and was called upon by the Commander in Chief to come forward with his charges (if he had any) against me. He had delayed doing so, upon various pretences. And, at that time, when his dilatory resources were apparently exhausted, he found it necessary to give a wider range to his calumnious representations, and to account for the future unsuccessful result of his prosecution, (which he seemed already to anticipate,) by insinuating, or rather plainly asserting, that his brother officers, and other gentlemen of irreproachable characters, expected to be witnesses on my trial, had formerly been my minions, and still were under my controul; in other words, that I was to suborn evidence in my defence, and that those gentlemen were capable of committing perjury.

Presuming on this introduction, my accuser proceeds, *in forma pauperis*, to beg money from the Commander in Chief; and, with peculiar intrepidity, to ascribe to his Royal Highness a *kindred wish* to his own, to expose my conduct, *in order to justify the previous measures* of government against me;—that is, the Commander in Chief was to become a party with my accuser, and to assist him with his purse in a malicious prosecution, for the avowed purpose of giving a colourable pretext, in the view of the public, for my deprivations of rank, situation, and fortune, produced by the calumnies of my accuser!

Of the return made by his Royal Highness to an application of so extraordinary a complexion, I am ignorant; but that it was such as, in all respects, became that illustrious personage, no doubt can be entertained.

Delays continued to be multiplied on the part of my accuser; and when, at length, his charges came to be exhibited successively, under different forms, there is nothing that can more forcibly strike, and carry conviction home to every impartial and honest mind, with regard to the motives which directed these, as well as his letters to the Commander in Chief, than this, that, on one hand, not a syllable of the atrocious accusations in the letters is to be found in the charges; and, on the other hand, not the most distant hint of the matter of the charges is to be discovered in the letters.

The light, and strength of evidence, which these circumstances throw upon the whole of the present business, are irresistible.

Considering the charges in themselves, as they now appear, I may be allowed to state, that, howsoever relevant, weighty, and aggravated they may be, yet, at the moment in which I speak, I stand convicted of no part of them.

Thus circumstanced, if I am not much mistaken and misinformed as to the happy genius of our revered constitution, and the equitable spirit of our laws; though I stand here a prisoner, and arraigned, yet I have a right to be considered, and, in truth, am considered by the laws of my country, as an innocent man. In this respect, I boast of no uncommon privilege, nor pretend to claim any advantage above the acknowledged birth-right of the meanest and lowest of his Majesty's subjects.

But I am free to own, that the situation in which I at present appear, does but little correspond to that of such a person as I have just now described. The offence were not slight, of which the sufferings I have experienced, might not be held an expiation. Permit me, my lord, to say, that a man, who is worthy of bearing the name of a soldier, receives a deeper, and more afflicting wound,

from a blow struck at his character, than from a stab aimed at his heart. Yet, during a long and dreary period past, it has been my severe and singular fate, without a possibility of relief or redress, to be censured unheard, to be condemned untried, and to be punished unconvicted.

Such are the inauspicious circumstances under which I have been introduced into this court: and, while I am sensible of the impression they are naturally fitted to make, I will not dissemble the happiness I feel, in finding myself at length brought to trial, before judges, on whose minds vulgar prejudice, and vulgar calumny, can have no influence, and who are perfectly qualified to examine into my conduct, and to decide upon its merits. Whether my accuser meant to put me on trial for my life, it imports me little to know, or to enquire. He has put me on trial for a stake of infinitely greater value, and for a purpose of infinitely higher importance. He has called upon me, in the face of the world, to vindicate my honour—to defend whatever can render life dear, or worth having. And happy I am to embrace the opportunity offered, as discharging my duty, in answer to that call, in the presence of judges who sit here, not merely as a Court of Justice, but, in the highest sense, as a Court of *Honour*. I can wish for no other arbitrators of my destiny: well knowing, that the judgment which shall be finally pronounced in this trial, will be such as to add one more to the many existing proofs of the peculiar blessings which Britons enjoy, as the subjects of a country where a man cannot be disgraced but by his own misconduct, and where a malignant or vindictive attempt, to cast a stain upon innocence, reflects dishonour only upon the party who makes it.

My Lord,
I beg that the *First* Charge may be now read.

[The Judge-Advocate having accordingly read it, Colonel Johnstone proceeded.]

My Lord,

This charge, which my accuser has selected to stand at the head of his list, is, at first view, of a very deep and serious nature, in as far as it plainly means to hold me up as the guilty cause of the unfortunate mutiny which broke out in my regiment on the 9th of April 1802.—If the charge, to that extent, were true, and if the crime imputed had been brought home to me by credible and satisfactory evidence, I am free to allow, that the most severe punishment recognised by martial law, would be barely adequate to the guilt. On the other hand, if it shall be found, that a crime of that atrocious description has been unjustly, falsely, and maliciously charged by this prosecutor against his superior officer, and the Colonel of his regiment, I trust that this Honourable Court will not think I go too far in saying, that the injury done me will not be repaired by a simple acquittal.

This charge consists of two distinct parts; one relating to a sum of Five hundred Pounds, said to be Government money due to the regiment, which I am accused of having clandestinely obtained in October 1801, from the regimental Paymaster, by bill drawn by him on the agent of the corps, and charged by the latter to the Paymaster's regimental account, when I knew that the accounts of the regiment were in confusion; the other, relating to a sum of One hundred and forty Pounds, said to have been stopt, by my orders, from the Paymaster in March or April 1802, out of the subsistence of the regiment, under the false pretence, that the same was justly due to me. And the consequences stated, with a view to aggravate and inflame, are, that the Paymaster's difficulties were increased, the men were unpaid, and discontent was excited in the regiment.

I confess, that the perusal of the *first* branch of this charge surprised me not a little, as the Court will believe, when I inform them, that it is made up of statements, not only unfounded, but which were clearly proved to be so, in the late trial of the prosecutor himself. The proceedings in that trial, which are on your table, shew, that Major Gordon, in order to excite prejudice, and to create injurious impressions against me, introduced into

his defence the substance of this part of his charge, though foreign to the question then at issue.—The equity of the Court granted me an opportunity of refuting the calumny; and I had every reason to believe, that the explanation I gave, and the proofs I produced, were satisfactory.

As to the other branch of this charge, my Accuser, on the occasion alluded to, through the whole of the opening of his defence, with all his attention to my conduct, was pleased to take no notice of it.

I think it proper to mention these things for the consideration of the Court.

I shall consider the two points composing this charge, in the order in which they are stated; and, first, with respect to the Five hundred Pounds.

The appearance of this charge, on a slight view, is formidable to the eye; and its sound, at first hearing, alarming to the ear: But a little attention will shew, that its real strength nearly, if not entirely, consists in what may properly be termed *calling names*. I am said repeatedly to have acted contrary to my duty, to the general injury of the service, clandestinely, selfishly, under false pretences, and false promises, to have violated my engagements, and to have excited discontent in my regiment. These are strong general assertions; but on examining the charge more closely, they will be found to resolve into empty sound; and the statements, from which such violent conclusions are drawn, will be seen to bear on their face the most glaring inconsistency, irrelevancy, and falsehood.

It will not be said, if a man, with no ill intent, does an act in itself innocent, but which happens to be the occasion of some consequential damage or injury, that such consequences ought to attach guilt to the act, or penal responsibility to the actor. The mere act of an officer's borrowing from the Paymaster of his regiment, is in itself neither criminal nor extraordinary. If the Paymaster, who is the best judge of his own affairs, chooses to lend, when he should not, and embarrassment ensues, he has

himself only to blame, and must stand to the consequences.

It is extremely improbable that a Paymaster, in the moment of financial difficulties, would chuse to increase the pressure by lending a part of what little money he had; accordingly, in the present instance, the confusion, said to have existed previously in the regimental accounts, is itself pretty strong evidence, that the bill in question was not such as to increase that confusion. But, as a proof that the transaction was wrong, it is said to have been *clandestine*.

This is not very intelligible.—Few men choose to proclaim to the world every circumstance of their private affairs. The parties interested in this transaction, were Mr Seward the drawer, myself the indorser, Messrs Robarts and Company of London the indorsees, and Mr Hughan the agent, on whom the bill was drawn. All these persons were, in due course, made sufficiently acquainted with the bill; and I cannot imagine a reason why I should have said a word about it to any one else.

As to the assertion, that I obtained the draught under promise to direct the agent to place it to my own account, the Court will perceive, that, supposing the fact to have been so, the transaction was one of the idlest ever entered into; for why apply to *Mr Seward* to draw a bill *on the agent* to be placed to my account, when I might have drawn directly on the agent myself? But taking the fact, as stated by my Accuser, there is *an end to his charge:* For, as the paymaster *believed* at least, that the bill was not in any manner to affect his accounts, or credit with the agent, there was nothing to hinder him from drawing on the agent, the moment after signing this draft, to the same extent as if no such draft had existed, and thereby preventing all the pretended bad consequences of embarrassment and discontent.

Of a piece with the above assertion, is that of my having promised to *Major Gordon,* to transfer my pay, as Colonel, to the Paymaster, to liquidate the sum of the draft;—an assertion not altogether consistent with that gentleman's description of the *clandestine* nature of the

transaction, *and which is not to be found in the original edition of his charges given in to the Adjutant-General.* Now, if, by express agreement of the drawer, this draft was to be placed to my own account; in other words, if it was to be paid by me *to the agent*, how could Major Gordon take my promise to pay the same debt a second time, by transferring my pay *to Mr Seward?*

Besides, as my pay passed through Mr Seward's hands, he was entitled, without any transference, to *retain* enough to liquidate whatever debt I owed him. Accordingly, it is not pretended that any thing of the kind was asked by *Mr Seward himself*, the party interested, and who alone had a right to make the demand.

The source of these inconsistencies will be found *in a deviation from truth.* The whole of this branch of the charge, indeed, is artfully and studiously framed to mislead the understanding. No person can read it, without having the idea, that the bill in question was, when due, *actually paid by Mr Seward*, or by the agent, with *his* money, and that I, in consequence, was Mr Seward's debtor for the sum of Five hundred Pounds sterling. My Accuser's dexterity lies in his not broadly averring so, but taking care that his charge must be understood to *mean so*, if it means any thing.

The truth is, however, that not one sixpence of that sum was ever charged to Mr Seward's account, nor paid by him, or with money due by government to the corps. It was charged to my account alone, and paid entirely out of my pocket. As to the accounts of the regiment, I knew only what Mr Seward, and my accuser, had access to know much better than myself. I knew the fact, which was established by undeniable evidence, in the presence of my Accuser, on his late trial, that when this bill was drawn, not only the full subsistence of the regiment, but a considerable sum *in advance*, had been paid to Mr Seward by the resident Paymaster.

These are the outlines of my defence against this part of the charge; and I have now to solicit the patience of

the Court, while I lay before them more in detail, the circumstances of the case as they truly happened.

Although, from what I have stated, it may be thought unnecessary to trouble the Court with any inquiry about the actual state of the regimental accounts at the date of this bill, yet, as I am accused of having entered into a clandestine transaction, tending to increase the distress of the corps, *at a time when I knew that distress to be great*, I feel myself called upon to say a few words in explanation.

In spring 1801, my regiment was detached from Antigua, by orders of the Commander in Chief of the forces, with other troops, on an expedition against the Danish islands; and, during the early part of summer that year, was quartered at St Martin's, St Bartholomew's, and other islands to leeward. While in that situation, the regiment was supplied with money from time to time, by the several resident Paymasters in those islands, till the Deputy Paymaster-General discovered that the amount of those supplies exceeded what the regiment was entitled to receive; and that, beside the sums drawn by the Paymaster of the regiment, other officers of the regiment had drawn at Antigua no less than L. 880 : 1 : 4 currency. He therefore resolved to suspend further advances, until Mr Seward, the regimental Paymaster, should settle his accounts, which he had never done since joining the regiment in the year 1800.

Matters were thus circumstanced, when my regiment arrived at Dominica on the 6th of July 1801; and Lieutenant-Colonel Wilson having obtained leave of absence, and gone to Europe, Major Gordon became the commanding officer, from the time of his departure in August 1801.

At that time, the full pay or subsistence, including the above L. 880 : 1 : 4 d. had been received *in advance* to the middle of September then ensuing.

A dispute afterwards took place between the Deputy Paymaster-General on one hand, and Major Gordon and Mr Seward on the other hand, with respect to that sum.

The circumstances of this dispute were communicated to me, in October 1801, by Mr Salton, the resident Paymaster at Dominica; who, at the same time, shewed me a letter he had received from Mr Sayers, the Deputy Paymaster-General, dated at Martinique on the 16th of that month; in which he says, "As a proof that on no "account do I wish to attack, or in the most distant man-"ner to be the means of the regiment's being dishonour-"ed, you have my permission, as has the General, to is-"sue any monies he or you think proper to them; only "do you be responsible to me, until Mr Seward balances "and signs accounts. Pray acquaint the General, at the "same time, that since Mr Seward joined the regiment, "*he has never once settled his accounts;* nor, since January "last, has a pay-note been sent in, or a warrant granted, "until Mr Mackay came over."

I immediately wrote, and delivered to Mr Salton, to forward directly to Mr Sayers, a letter, dated on the 18th of that month, in which, alluding to the debt contracted at Antigua, I express myself in these words: "Allow me "to request that you will *debit me personally* with the "amount of that advance; I cannot, for a moment, al-"low either you, or your assistant, to run the risk of that "advance."

Before that letter reached Martinique, the dispute which occasioned it had terminated, by Mr Sayers agreeing to accept the joint guarantee of Major Gordon and Mr Seward for payment of the L. 880: 1: 4d. currency on the 24th of December 1801, and to direct his resident, Mr Salton, to pay immediately the whole of the balance due to the regiment, *without deduction of that sum.*

In consequence of this arrangement, my personal interposition was not required; and I mention the circumstance, merely that the Court may consider, how far it is probable, or credible, that I, who, on the 18th of October, offered to engage my private credit and fortune for the relief of the corps, should, on the 30th of the same month, have been capable of entering deliberately into a clandestine transaction, for a paltry self-interested purpose, that was to deprive the Paymaster of the means of

answering the necessary calls for money, and put the existence of my regiment to hazard, by driving the men, from want, to desperate courses.

My Accuser is pleased to represent his conduct, in the agreement with Mr Sayers, as highly meritorious. I have no desire to detract from his merit, but simply to explain the fact according to the evidence. The sum for which Mr Sayers was to have credit on 24th December 1801, was L. 880 : 1 : 4 currency. Of this sum above L. 100 was due by Lieutenant-Colonel Wilson and Mr Seward himself; L. 405 more was charged against Captain Cummin's abstract, to 24th December 1801; and L. 30 against Lieutenant Westeney's: The remaining L 350 currency was charged against Quarter-master Reynolds, who died on 24th September; and his effects, which were understood to *exceed* the amount of his debts, *were immediately taken possession of and sold by Major Gordon.* Thus the whole of the money in question was either stopped from the abstracts of the officers liable for it, or actually *lay in Major Gordon's pocket for near three months before crediting it to Mr Sayers' account on 24th December.*

The true balance then due to the regiment, after deducting that sum, was no more than L. 997 : 15 : 0½ currency; being less than *one month's subsistence* of the regiment. But, on the 26th of October, pursuant to agreement, Mr Salton, by orders from Mr Sayers, paid into Mr Seward's hands the whole balance, *without deduction of that sum,* being L. 1877 : 6 : 4½ currency: And, on the same date, he paid to Mr Seward, *in advance,* to account of the November muster, the further sum of L. 540, 14 s. 3½ d.

On the occasion of this settlement, Major Gordon, as commanding officer, pledged himself for the future good management of the financial concerns of the regiment, by his letter to Mr Sayers, recorded in his trial; in which he says: "*I will take care that no confusion in future* takes "place in the accounts; *that correct pay-notes are regular-*"*ly transmitted;* and shall expect that payments are *as* "*regularly* made." Mr Sayers, in his answers, accepting of this pledge, says: "In future it will be my fault if

" they receive not, *as any other regiment,* their pay regu
" larly. I hope, *to entitle them to this, you will see the re-*
" *turns regularly made.*"

Such was the agreeable view of the accounts,—the affluence of the Paymaster,—and the comfortable prospect for the whole regiment, with relation to pecuniary concerns, when I happened to have occasion to remit from Dominica, to Messrs Robarts and Company of London, the sum of L. 5000 sterling, as an instalment then due of the price of an estate which I had purchased in that island. I was in no want of money, but it was necessary to make my remittance in bills on London. Of these I purchased to the amount of L. 4500; and, when looking about to find a bill for the remaining L. 500, it occurred to me, that in case Mr Seward (who was at that time in my house) had money of his own in the hands of the agent at home, it might be convenient for him to give me a draft for the sum I wanted, as I had claims upon him at that time to a larger amount, of which I might have claimed immediate payment: I therefore asked Mr Seward, Whether he had as much private money in the agent's hands as would answer to the draft I wanted? to which he answered, That he had; and thereon agreed to give me his draft, in the following terms, to which I request the attention of the Court:

Exch. for L. 500 Sterl. Dominica, 30th October, 1801.

At ninety days sight of this my third bill of exchange, (first and second of the same tenor and date not paid) pay unto *Governor Cochrane Johnstone,* or order, the sum of Five hundred pounds Sterling, *for value received,* and place the same, without further advice, to the account of your obedient servant,

RICHARD SEWARD.
Paymaster 8th W. I. Reg.

To THOMAS HUGHAN, Esq.
Bridge-Street, Blackfriars, London.

It is material here to mark, that nothing could be more remote from this transaction, than the idea of drawing

for any *public money* in Mr Hughan's hands. Military men will require no stronger proof of this, than the tenor of the bill itself: It is in express terms a *private* bill, —a bill payable to me, as a *private* individual, and bears to be granted for *value received.* It does not state, that it was drawn on account of *public services*; neither was it, in its nature, nor could it be considered, in any respect, as constituting a *regimental* debt. The effect of this, though perhaps anticipated by the reflections of the Court, will be shewn in the sequel.

On receiving the draft, I gave the following acknowledgment to Mr. Seward.

> Dominica, 30th October, 1801.
> Received from Mr Seward, Paymaster of the 8th West India, a set of bills for Five Hundred Pounds Sterling, drawn at ninety days sight of this date, *for the amount of which I hold myself accountable to Mr Seward.*
>
> *A. Cochrane Johnstone.*

I need scarcely take notice, that this *obligation to account*, independently of previous observations, ascertains the real nature of the transaction, and directly falsifies the charge. If the bill was to be placed to my own account *by the agent*; that is, if I was to account for it to *him*, why oblige myself to account for it to *Mr Seward?* and if I did become bound to account for it to Mr Seward (which was the case) what could he, or Major Gordon, ask more? And what more could be obtained from my promise to transfer my pay, in other words from my promise *to account to the extent* of *my pay*, than from my *prior, stronger,* and *broader* promise, to account for the *full contents of the bill?*

I am sorry to say that Mr Seward, in this transaction, if he did not deceive himself, greatly deceived me. For, instead of having 500l. in the hands of Mr Hughan at the time, he was actually indebted to him to a considerably greater amount. But of this I knew nothing, till some months afterwards.

The bill indorsed by me, was transmitted to Messrs Robarts and Co. and by them presented to Mr Hughan, who, from what I have just now mentioned, would have allowed it to return protested to the West Indies, had it not been for my indorsement of it; and he accepted it solely for my honour.

With all this Mr Hughan acquainted me; and in consequence, I paid the contents of the bill to him, which, as far as regarded the transaction between Paymaster Seward and myself, never was any thing better than a bit of *waste paper*.

Thus, so far from having got 500l. of government money due to the corps, I never received from the paymaster one single sixpence, nor any thing but a bit of paper, which turned out to be of no value whatever, and which never did, nor possibly could affect, either the accounts, or the credit of the regimental Paymaster. The bill, so far from ever having been charged to the Paymaster's account, was accepted solely for my honour, placed to my account, and paid out of my pocket.

I have observed, that the charge is framed in such a manner, by concealing the truth, as to excite the idea, that the bill actually was paid by Mr Seward, and that engagements binding me, in that event, had been unscrupulously violated.

If my Accuser had done what every legal and moral tie bound him to do; if, in stating to this honourable Court so grave and deep an accusation of his Colonel, he had related the plain matter of fact, that the Paymaster deceived and misled me to believe, that he had money, not belonging to government, but his own private money in the hands of the agent at home, where, on the contrary, he had only *debts*; and that the draft *originated* in a *private* transaction with the Paymaster, and terminated in a *private* transaction between the *agent* and *myself*, with which the regiment had not the smallest concern, the Court could have been at no loss to perceive, upon the bare statement of the charge, that it was absurd and unfounded.

This defect in the statement of the prosecutor, has

however, been supplied by the evidence which he himself has produced, and by which I apprehend, with submission to the Court, it is established, that the charge not only is without foundation in fact, but has been maliciously brought forward by the prosecutor, when he was in the full knowledge of the real circumstances of the case.

In one view, it will be remarked, that Mr Seward *gave* me no value whatever, and therefore he was not entitled to *receive* any value from me. To pretend, that his not having received from me 500l. on the occasion of this draft, deprived him of the means of making regular payment to the regiment, is in other words to say, that because I did not *lend*, or make a *present* to him of that sum, he was unable to account faithfully as Paymaster.

The bill was presented to Mr Hughan on the 1st of January 1802, who accepted it on that date for my honour alone, and acquainted me with his having done so by letter which I received early in March. I immediately communicated its contents to Mr Seward; and in consequence, the transaction between us, if it ever had been regimental, was done away as completely as if it never had taken place.

This was a long time before any symptom of mutiny appeared; and Mr Seward had sufficient time in the interval, to re-establish his means of paying the regiment, ridiculously said to have been impaired by the bill in question, by drawing to the extent of his credit on the agent. But before this time, Mr Seward had *in his possession* Mr Hughan's account with him, *on which a balance of* 568l. 11s. 6d. *stood against Mr Seward from* 31st *December* 1801, the day *preceding* the presenting of this bill for his acceptance.

I have here only to add, that Mr Seward, at the time of my receiving that advice from Mr Hughan, *had drawn the whole of my pay from June* 1801, amounting to 307l. 12s; and it was not till after the receipt of Mr Hughan's letters, and when, in consequence, the business respecting the draft was finally disposed of, in the manner explained, that I received any part of that arrear.

Enough, I humbly flatter myself, has been said to shew, that the fatal tendency and operation, charged to the account of this bill, is truly the work of my Accuser's imagination. But I must confess, that I cannot rest satisfied with barely shewing, that the transaction produced no bad consequences, without also satisfying my judges of its intrinsically harmless nature, (which made it absolutely *impossible* that the effects imputed could be caused by it) and of the innocence of my intention in entering into it. This obliges me to request the farther indulgence of the Court, which I shall be careful not to abuse.

Your lordship will be pleased to recollect, that the draft was made by the Paymaster of my regiment upon the agent in this country. Now, the judges whom I have the honour to address, and, I may add, every officer of experience in his Majesty's service, well know, that the *fund* for subsistence or pay of the *men* of a regiment in the West Indies, is not placed in the hands of the agent in *Britain*; nor do the soldiers of any such regiment draw their pay in this country. And this more especially is the case with a black corps, which the 8th West India regiment was.

The mode of payment is simply this: the regimental Paymaster makes up his requisition or pay-note, monthly, which he signs; and the same, on being examined and approved of by the *commanding officer*, is signed by him also. One duplicate, thus signed and countersigned, is sent to the resident Paymaster of the island; another duplicate and triplicate are transmitted to the secretary of the commander in chief of the forces, who, upon such requisition being checked and passed at the office of accounts, issues his warrant to the Deputy Paymaster general, to pay the amount; and payment is made, and receipt given by the *regimental Paymaster* to the Deputy Paymaster General, or his agents, usually called *resident* Paymasters. The D. P. M. General reimburses himself by drafts on the Paymaster General in this country. With all this the agent in Britain has no concern whatever. Not a farthing of the pay of the *men* passes through *his*

hands; nor, of course, can the regimental Paymaster draw upon *him* for one farthing on account of the pay or subsistence of the regiment.

The *agent's* department is of a totally distinct and separate nature, for regiments on foreign service. The paylists which, by the regulations of the army, ought to be made up, and certified by the captains, and commanding officer, on the 24th of every month, and sworn to by the Paymaster of the regiment, are, when so authenticated, ordered to be transmitted monthly to the war-office here. The *men* have no claim on *these paylists*, nor on any account whatever, upon the *agent at home*. On the contrary, the paylists are the proper evidence of the *men having been paid*, and mustered, and of their having, in consequence, *no claim* in any quarter. The monies on the paylists arise from the *contingent allowance, and non effective division*, for the officers commanding companies, and for *postage and stationary*. For these allowances, the officers have an undoubted claim; but it will be attended to, that the paylists, *duly certified*, are the sole legal evidence of such claim: and, until the paylists are transmitted, and received at the war-office, no warrant can be issued for payment of any draft for the sums due upon them. For the same reason, any draft for payment of a sum stated as due on a paylist, must specify the *service performed*, or other public ground of the claim, with the course or rate of exchange, in order to its being considered as a *regimental debt*, and entitling the drawer to payment at the war-office, or from the agent in Britain. This is agreeable to his Majesty's regulations, which are printed for the government of regimental Paymasters, and others concerned, and are commanded to be *strictly observed*. These regulations, which lie on your table, in section 15th of the publication 11th May, 1801, relating to Regiments on foreign service, "farther declare, that "if any bill whatsoever is defective in either of these "particulars, *it will be returned*; and the consequences "will fall upon the drawer."

Such being the case, the consequences will be attended to.

In the *first* place, the bill being a *private bill*, specifying *no public service* as the cause of granting it, never could entitle me to draw from the agent one penny of the *public money*. It belonged to Mr Seward, officially, to know, that this was the case; and the circumstance is material, as it ascertains the true light in which I viewed the transaction at that time. I knew that any draft of the tenor of that in question, remitted by the regimental Paymaster as a *public bill*, must, in terms of his Majesty's instructions, have been returned by the agent, protested, with all the ruinous consequences of accumulated charges, and blighted credit. It will not be supposed, that I should have inclined, with my eyes open, to involve the character and credit of the Paymaster of my regiment, as well as my own, in a scheme at once so injurious and so impracticable. It was impossible that Mr Hughan could accept, or pay the bill, except on one of these two grounds; viz. 1st, That he had an equivalent sum of Mr Seward's private property, or money, in his hands; or, 2dly, That he acted for my honour; in other words, that he relied on my personal responsibility for the debt. Accordingly, this last has been shewn to have been the footing on which he proceeded.

But this is not all. In the *second* place, It has been proved by the prosecutor's witnesses, that on the 1st of January 1802, when the draft was presented to the agent for acceptance, the paylists of my regiment, for no less a period than *ten months* preceding that date, had not been transmitted to the war office, nor so much as finally made up, and authenticated by the Paymaster's oath; more particularly, that the very paylist for October 1801, the month in which the bill was drawn, so far from being sent home at that time, was not even sworn to by Mr Seward, in the West Indies, until the 6th of April 1802. Consequently, for this, independent of all other reasons, Mr Seward, on the former date, could not have drawn on the agent, in any form, for any sum of the public money whatever.

In the *third* place, let me suppose, that through inexperience, or inadvertency of the agent, or from any other

cause imaginable, I had received the amount of the draft in question, in cash, out of the funds in the agent's hands, appropriated to satisfy the claims arising on the pay-lists; I entreat the attention of the Court to this, that whatever inconvenience might have thence ensued to the *officers*, *none* could possibly have been felt by the *men*, who, as I have explained, and as every military gentleman who now hears me, knows, *are not paid by the agent at home, nor out of any fund in his hands*, but from a quite different, and unconnected fund in the hands of the Deputy Paymaster General, or his residents, in the *West Indies*.

Upon the whole, I trust it will be evident to the Court, that, in taking this bill, any idea of touching the public money, of affecting the Paymaster's credit, or exhausting the resources of my regiment, neither did, nor possibly could enter into my mind; that in fact, I did not, by this bill, receive one farthing of money belonging either to the public, to the Paymaster, or to the regiment, with relation to whom the transaction, on the most favourable view for my Accuser, was in effect the same as if it never had existed.

Put the case, that the bill had not been drawn on the 30th October, 1801, the Paymaster could not then have drawn for 500l. nor for *one shilling* upon the agent, because he already owed him above 500l.; and because the paylists for that, and for several preceding months, were not sent home, in breach of his Majesty's instructions; for which Major Gordon, as commanding officer, and the regimental Paymaster, were nearly alike *culpable*. On the other hand, the Paymaster owed me, upon the same date, upwards of 500l. of which I might have insisted for immediate payment; had I done so, I should have diminished the Paymaster's means, even to *a greater extent* than this charge accuses me of having done,—and been blameless. But instead of doing this, I took nothing from the Paymaster but his *subscription*; leaving his means and credit entire, *with the whole of my money in his hands for several months thereafter*;—and *for this* I am arraigned!

For the sake of perspicuity I have thought it proper

to lay the merits of this part of the case before the Court in a connected view, without interrupting my narrative by any comment upon the evidence. It becomes my duty, before concluding, to make some observations on that head; and, in doing this, I shall endeavour to follow the order of the dates of the facts to which the witnesses have sworn, rather than that in which the testimonies were given.

By the section, already quoted, of instructions respecting bills drawn by regimental Paymasters abroad, "the "Paymasters are expressly required to take the *earliest* "*opportunity* of sending to the agent, by different con- "veyances, *letters of advice* of all such bills, specifying "in the said letters the total amount of each bill, and "the proportional sum included therein for each head "of service." From Mr Seward's misconduct in not sending any letter of advice with the bill, Mr Hughan, the agent, was at first in some doubt what opinion to form of it; and, in that situation, he naturally presented it at the War Office, where payment was refused, *because* the bill did not specify the purpose for which it was drawn.

At that time, the Paymaster was indebted to the agent in the sum of 568l. 11s. 5d. due on account from 31st December, 1801.

The paylist *for October*, 1801, was not transmitted from the West Indies *till April*, 1802; consequently, the Paymaster had no title to draw upon the agent in October, 1801, for any sum whatever, whether of public money, or on his private account. On being apprised of this circumstance, by letter from Mr Hughan, which I received in March, 1802, the private transaction with Mr Seward was entirely done away, and the bill in question, as Mr Seward's own letter of 2d June expressly states, *was cancelled in presence of Major Gordon himself*. In the mean time, the bill did not, in any respect, affect Mr Seward's credit with the agent, who never charged it to Mr Seward's account, but to my account, and received payment of it from me; and as soon as the paylist to 24th December, 1801, was received by the agent, he credited the

Paymaster, with the full amount of balance, appearing on it.

Such is the substance of Mr Hughan's deposition, and such is the prosecutor's *own proof* before this Court, of my having clandestinely obtained, for my own use, 500l. sterling, of the public money due by Government to my regiment, by bill drawn on the agent, and by him charged to the Paymaster's regimental account, whereby the confusion of his accounts was increased, the Paymaster deprived of the means of regularly paying my regiment, the accounts left unsettled, and discontent excited in the corps.

The *absurdity* of the accusation of *concealment* and *false promise* follows, as an unavoidable consequence of the groundlessness of the other parts of this charge; and I should have allowed that accusation to pass unnoticed; had it not been for the attention which I owe to the species of evidence employed by my Accuser to support it.

Your Lordship, and the Court, have seen the prosecutor's witness, Mr Seward; and you have heard his answer to the different questions that have been put to him by the prosecutor, as well as by the Court. I should think myself much to blame, were I to call your attention, for one moment, to those parts of his deposition which are contradicted either by other respectable testimonies, or by the evidence of his own hand-writing. But I confess that I should consider myself as deficient in explaining the true spirit and complexion of this prosecution, were I to omit stating a very few observations, suggested by the circumstances which I am now briefly to relate.

This unfortunate man, when a witness for my Accuser on his late trial, having answered to a string of *leading* questions, in such a manner as to seem merely the echo to his examiner, I produced a very material paper of a contrary import, which he *confessed was signed by him*, but which he swore, notwithstanding, *he did not recollect having ever seen*. Finding himself still farther involved, upon a few additional questions from me; "Mr Seward "(as the record on your table bears) took occasion to

" observe to the Court, that he thought it proper to state, " that, about this time, (the time referred to, was De- " cember, 1801) he was exceedingly ill, which illness af- " fected his reason in a great degree, which will account " for his want of recollection of many circumstances that " may have taken place about this time."

The man who gives this description of himself, was examined by Major Gordon at great length; and, on being asked, " Did Colonel Johnstone desire him to conceal " his having drawn that bill, at the time of his (the wit- " ness's) drawing it?" Mr Seward answered, " *He can- " not say.*"

At the distance of more than thirteen months after that deposition, when the memory of the witness could scarcely be expected to have materially improved, Major Gordon thought proper to ask Mr Seward upon his oath in the present trial, " Did Colonel Johnstone, when you " drew the bill, desire you not to mention it?" To this question Mr Seward answered, " *To the best of my re- " collection, I think he did.*"

Your lordship will not suppose, that, when I heard this answer, I could feel any thing but compassion for the unhappy witness. And I was not much relieved by the poor man's subsequent answer, in explanation to a question from the Court, That his *only reason* for supposing, that he did enjoin me secrecy, was, *that he did not mention the drawing of the bill for some time afterwards.*

On the trial of Major Gordon, I considered it to be of essential importance *for me* to recover, among other documents, the settlement concluded between Mr Seward and Mr Kerr, on the 22d of April, 1802. I knew that Mr Seward's books and papers had been *in the possession of Major Gordon.* But it did not occur to me, that I should have any difficulty in obtaining production of such of these documents as I should call for.

In this, however, I was disappointed; for, in answer to a *leading* question by Major Gordon, respecting the scarlet cloth, Mr Seward answered, That the account I have mentioned:—that, " *The account, he observed, he had lost during the mutiny.*"

In the present trial, where my Accuser having, as it should seem, changed his ground, chose, in his turn, to call from Mr Seward *for the same account;* he had no occasion to do so in open court, and by the assistance of those powers with which the law invests you.—The account which, I had been told, *was lost in the mutiny,* Mr Seward had no difficulty to put into my accuser's hands, whenever he had occasion to ask for it.

It will be remembered, that *Major Gordon held that account in his hands when giving his testimony as prosecutor.* This, however, is not all. Your lordship has heard Mr Seward depose, that the sum relating to the scarlet cloth was not settled by him till the 22d of April 1802, when, and not before, the account in question, and relative vouchers, were delivered to Mr Seward;—that is, the account *which Mr Seward swore,* on Major Gordon's examination, *he had lost in the mutiny,* he has since produced, *at Major Gordon's desire;* and *has sworn,* that it was not put into his hands *until a fortnight after the mutiny.*

This witness has told the Court, upon his oath, that I came to his lodgings, and wrote a letter for him to the Secretary at War, which was not correct nor true; that he told me so at the time, but which he nevertheless signed, and said nothing about the matter, till more than three weeks afterwards; when he wrote another letter perfectly correct and true, though unfortunately *bearing date at Major Gordon's lodgings;* which, on Major Gordon's examination, he has sworn *not to be the true date.*—On a question from the Court, whether his objection to the first letter was, that the bill was there said to be a *private* bill; he answered that *it was not;* and it will be recollected, that the other circumstances of difference between the two letters were not thought to bear materially on the issue.—I certainly have no desire to imitate the example of my accuser. I wish not either to conceal, or to misrepresent the most minute circumstances of an extremely trifling occurrence.—The simple matter of fact is this: Mr Seward, on his arrival from the West Indies, called on me; and shewed the letter he had received from Mr Secretary Yorke.—The poor man hinted his wish, that I

would assist him in writing an answer agreeably to the fact, perfectly well known to us both, as he was rather deficient, particularly in *spelling*.—I readily agreed to assist him;—he dined with me that day; and, on the day following, I called on him, and assisted him in framing the answer produced. He thanked me heartily; he retained one copy, I another; and the original, written and signed by him, was transmitted to the Secretary at War.

The subsequent letter, dated at Major Gordon's lodgings, but *sworn to being erroneously so dated*, is also produced—and I have nothing further to observe upon these productions than this;—That the *incorrect* and *untrue* letter written for Mr Seward by me, *is completely verified in every article by Mr Seward's own letters produced, written by him from the West Indies, long before there could be any prospect of the present trial*, and,—that the letter, sworn to be falsely dated *at Major Gordon's lodgings*, is no less completely contradicted and falsified, in every material article of its contents, by that same evidence, under Mr Seward's own hand.

If I have any knowledge of my own breast, I can lay my hand upon it, and say, there is not *there* an angry feeling against this person Mr Seward. And there is not a circumstance of any transaction, in which, I may say, I had *the misfortune* to be concerned with him, which I should have the least objection to make public to the world. But, my lord, I must confess, that if *I* had written, or prompted him to write, the letter of 29th November, 1808, to the Secretary at War, it is probable that I should have wished to conceal my doing so; *because*, it is probable, that I might have been informed of the legal consequences of *subornation of perjury*.

My lord, I have thought it necessary to state these circumstances with respect to a man, for whom I profess to feel no other sentiment than that of pity and commiseration, in excuse for my declining to examine him upon oath, though the Paymaster of my regiment, and in a question immediately regarding the accounts of my regiment. I trust, that my defence rests upon other grounds

than any I have now alluded to.—I am free to own, that I feel, with some exultation, that, prisoner as I am, I stand in need of no such support.—*Non tali auxilio—Non defensoribus istis* *.

As to the *second* branch of this charge, respecting 140l. sterling, which I am accused of having stopped *out of the subsistence of the regiment*, when it was in great distress for want of money, my defence may be comprised within a narrow compass.

In the year 1799, an application was made on the part of the officers of my regiment, which was then stationed at Antigua, requesting that a quantity of cloth and buttons for uniforms, should be sent to them from this country. Accordingly, being then in London, I gave an order to Joseph Ivatts, tailor, to procure me the articles required. Lieutenant colonel Wilson, of my regiment, took charge of them, and his brother-in-law, Mr Seward, then appointed Paymaster, gave to Mr Ivatts his draft for the amount on the agents, Mess. Ross and Ogilvie; but these gentlemen refused payment to Mr Ivatts; in consequence of which, I gave them my letter of guarantee for the amount, and their clerk has deposed, that they looked to

* It may be proper to mention, that, on the conclusion of Mr Seward's examination in chief, Colonel Johnstone read, and delivered to the Judge-Advocate, the following minute:—After which, the court adjourned till the next day; and at their meeting then, the Colonel declined putting any question to the witness.

My Lord,

Although I could not help remarking a number of passages in the testimony of this witness, which I should have been glad, for the satisfaction of the Court, to explain from his own mouth on my cross-examination; yet, I am sorry to say, that I find it impossible for me, on comparing those passages with evidence under the hand of the witness himself, in my possession, to come to a less disagreeable conclusion respecting them, than that Mr Seward has sworn falsely upon his oath.

Thus circumstanced, and holding, as I yet do, his majesty's commission, I am unwilling to proceed to put even a single question to that witness, without submitting myself to the opinion, and also humbly requesting the advice of the Court. Without this precaution, I confess my dread of becoming a party to subornation of perjury.

(Signed) Andrew Cochrane Johnstone.

me for the money. The price of the articles, including insurance and charges, amounted to 210l. odd.

Lieutenant colonel Wilson carried them out to the regiment, where they were entrusted to the quarter-master, under the superintendence of the commanding officer.—It is unnecessary for me to add, that it was *his* duty to instruct the Paymaster to take care, that whatever part of those articles was given away should be paid for, and the receipts transmitted to Mess. Ross and Ogilvie.

In autumn, 1801, when at Dominica, I was much surprised, upon enquiry, to learn, that no regular account had been kept of the issues of these articles; that many of the officers, who had received part of them, had left the island without having been called on for payment, and that the loss, of course, was to fall upon me.—I therefore wrote to Major Gordon, on the 29th of November, requiring him to send me, *with other states,* "A state of the sums of money received from the officers of the regiment for cloth issued by the quarter-master, and of the quantity issued, which (says my letter) I suppose you will be able to make out from the papers in your possession, with a state of whatever balance is due by the officers."

In consequence of this order, Major Gordon transmitted to me the state required, made out and *signed by the Paymaster,* and *certified by Major Gordon,* from which it appeared, that only 142l. 13s. 8d. had been *collected from the officers* on the above account, which sum the Paymaster acknowledged to be "*in his hands,*" as a debt due to me.—This state, I afterwards endorsed to the acting resident Paymaster, Mr Kerr, with an order on Mr Seward to pay the amount to him.

It will be recollected, that the articles in question were sent from this country in 1799; and so long after that period as November 1801, Mr Seward, the paymaster, had taken no step whatever to collect the price of the quantities issued from the officers who received them.—Upon the state I have mentioned being transmitted to me by Major Gordon, and neither he nor Mr Seward having expressed the most distant idea of the Paymaster being bound for the amount, or of its having been included in

any account transmitted to him from this country, I, of course, concluded that Mess. Ross and Ogilvie had charged the value to my account, in consequence of my guarantee, and I therefore took the debt upon myself.

I should be ashamed to employ argument before this Court to shew, that whatever part of that value was recovered, had no connection whatever with the subsistence, or pay of the regiment. It was, in reality, a sum advanced, in the first instance, by Mess. Ross and Ogilvie, but ultimately *taken out of my pocket*, for the accommodation of the officers of my regiment, which, consequently, they were bound to repay as a private debt they owed me.—In as far as these officers had made payments to Mr Seward, *he* was merely *their hand* to convey the money to me. It belonged neither to him, nor to the regiment, but to me alone.

In the state transmitted to me by Major Gordon, Mr Seward acknowledged the 142l. 13s. 8d. to be *then*, in the end of 1801, *in Mr Seward's hands*; and on Major Gordon's court-martial, I put the following question to Mr Seward; "Did he (Mr Seward) transmit to Colonel Johnstone, *through Major Gordon*, a state of the sum of money received by him from the *officers* of the regiment for the scarlet cloth issued by the quarter-master to the officers." The answer by Mr Seward was, "Yes; he believes he did."—The state was certified to be correct by Major Gordon himself.—I kept it in my possession till the *20th of March*, 1802, when I endorsed it to Mr Kerr, the acting resident Paymaster, in order that he should receive the money at settling with Mr Seward. Accordingly, at a settlement which took place on the *22d of April*, two days before my regiment quitted Dominica, being a fortnight *after* the mutiny, Mr Seward then, and no sooner, accounted for the sum in question to Mr Kerr, in presence of myself, of Captain Arbuthnot, now of the staff corps, and of Mr Quin, of Dominica, which two last gentlemen subscribed as witnesses to the settlement.—The entry in the account, subscribed by Mr Seward, and thus formally attested, is in these words: "To amount of

cloth due to General Johnstone, *in your hands*, 142l. 13s. 8d."

The Court will clearly perceive, that this sum was money collected from the *officers*, not taken *from the subsistence of the men.*

Therefore, at whatever time it might have been paid, or accounted for by the paymaster to me, it could not possibly affect his lawful means of paying the *men.* But when it is farther considered, that the debt in question was not paid or settled till a fortnight after the mutiny was over, and completely quelled; the pretence that the settlement of this article *produced* or excited to the mutiny, must appear not a little wild and extravagant.

It is certainly true, as asserted by my accuser, that, at this time, the value of the cloth constituted an article of charge against Mr Seward in his account with the agent; but nothing can be more erroneous than the colour attempted to be put upon that circumstance, or the conclusion attempted to be drawn from it. Mr Kerr has deposed, that Mr Seward signed the account in presence of most respectable witnesses who have attested it, after every article was deliberately considered and adjusted. Not only so, but Major Gordon himself, two days after, revised the whole articles, and was finally satisfied with the justice of the settlement. I have no hesitation in saying, that I believe Major Gordon did then, as I did, take for granted, that the debt *had never been charged to Mr Seward;* and nothing but the melancholy figure which that unfortunate person, Mr Seward, has made in your Lordship's presence, could enable you to conceive, that he should have been possessed, for many months, of the agent's account, containing this very article to his debit, and not have perceived, that such was the case, at least not have ever hinted either to Major Gordon, or to myself, or to Mr Kerr, at the settlement with him, that he himself suspected the case to be so.

Under these circumstances, I think it unnecessary, with great submission to your Lordship and the Court, to add a word more in my justification on this head, to what is already in evidence: viz. That as soon as I came to this

country, and learnt that the article in question was charged to Mr Seward's account, I instantly made it be replaced to his credit.—Of the candour of Major Gordon's construction of these circumstances I should be sorry to take any notice.

The result of the transaction is, that, instead of L.210, with several years interest, justly due to me by the officers, I have, through the negligence of the Paymaster, and not without blame attaching to my accuser as commanding officer, recovered in all, only L. 142 : 13 : 8; and I am still a creditor to the officers for the balance, exceeding L. 80 sterling, which I have, for some time, considered to be rather a desperate debt.

On a review of this charge, in its several parts, the amount substantially comes to this: Under the *first* branch, that I, when a *creditor* of the Paymaster to the extent of L. 500 sterling, did not make him a *present* of L. 500 more; and under the *second* branch, that after having, by the Paymaster's culpable negligence, lost a *part* of my just debt, I did not, by allowing the Paymaster to pocket the remainder, submit to lose the *whole!*

* * * * * * * * * *

My Lord,

I beg that the *second* charge may now be read.

[This done, Colonel Johnstone resumed:]

My Lord,

Under this charge, I am accused of having at times, between July, 1801, and the end of April, 1802, suffered the resident Paymasters (invidiously called my *secretaries*) to retain, or neglect to issue, a part of the subsistence of the troops; and, in particular, of having *suffered* Mr Kerr, in March or April 1802, to retain, or neglect to issue, L. 1,000, or about L. 1,000, (for my accuser has made the assertion both ways) due on account of subsistence to the corps, previous to the mutiny; whereby the men's ba-

lances were unpaid, and mutiny was excited among them. I am charged farther, with having, both in word and writing, asserted a falsehood, unbecoming my rank and the character of an officer, to vindicate Mr Kerr's conduct.

Under this trial, I am conscious of feeling anxiety about nothing so much, as that my conduct, as far as connected with the different charges, may be searched and probed to the bottom. At the same time, I am not insensible to those calls of duty, which require, that on such an occasion as the present, I should not, in conducting my defence, consult my personal feelings alone. The best interests and rights of the profession, to which I have the honour to belong; the military code by which these rights are protected and secured, have irresistible claims upon my attention: And I owe it as a duty of justice, and of regard to the common cause of every individual of that profession, that no precedent shall be established, through improper acquiescence on my part, by which the fortune, the rank, the life, or honour of a brother officer, may hereafter be illegally and unjustly sacrificed, or brought into peril.

Having said this, my Lord, and declaring my heartfelt wish to have every assertion, on which the charges are grounded, thoroughly investigated, I shall proceed, without apprehension of misconstruction, to state such observations, as appear necessarily to arise from the circumstances of the case.

On an attentive view of the matter of the first parts of this charge, I think it my duty to state, that it is totally *irrelevant* and improper to found a criminal accusation before this Court. The assertion on which alone the charge is founded, That I *suffered* the resident Paymasters to retain, or neglect to issue, the pay required by the regimental Paymaster, must either mean nothing, or imply that *my permission, or warrant*, was necessary, to entitle the resident Paymasters to answer the demands of the Paymaster of the regiment: But the truth is, that I neither could compel the resident Paymasters to issue, nor authorize them to withhold, one single farthing of the pay of the regiment.—It will be kept in mind, that, at the time

referred to in the charge, I held the situations of Brigadier-General in the West Indies, and of Governor of Dominica, beside that of Colonel of this regiment, then quartered in that island. In none of these capacities was I at all responsible for the conduct of the resident Paymasters; neither had I any authority or controul over them. This has been explained in the clearest and most satisfactory manner, by the prosecutor's own evidence.

I believe I have no occasion to state, for the information of any member of this honourable Court, that what are called the *resident Paymasters* in the colonies, or other countries abroad where British troops are quartered, are nothing else than the *private agents* of the deputy Paymaster-General for the district, who are employed by him; are responsible for their conduct to him alone; and are always civilians, not amenable to the Governor, or Brigadier-General. They are not themselves known, nor recognised as official persons, distinct from their constituent, the deputy Paymaster-General: *Their* agency is the mere execution of his will,—the action of *his* hands; *their* proceedings are *his* proceedings; *their* errors, *his* errors.—And, as they are solely responsible *to* him, so he is solely responsible *for* them. Even if the regimental Paymaster had complained to me of their misconduct, I do not know that *I* had any right to interfere; or, if I had, that *they* were bound to attend to my interference. The regimental Paymaster's remedy was a complaint, not to me, but to the deputy Paymaster-General; and if he refused to do justice, the Paymaster still had his appropriate remedy, under his Majesty's instructions, not by complaining to *me*, but by acquainting the Secretary at War; and, at the same time, drawing upon the agent at home for the full amount unjustly withheld by the deputy Paymaster-General.

His Majesty's instructions, May 1801, section 16. provide as follows:

"In every station where there is an acting deputy Paymaster-General, the Paymasters are to receive from him "all sums that they shall require for the pay of the regiment, as well for officers as for men. If, from unavoid-

"able circumstances, they should not be able to obtain "the necessary supplies of money from the deputy Pay-"master-General, *they may draw upon the agent*; but on "every such occasion, they are to acquaint the Secretary "at War therewith, by the earliest opportunity, and to "give, at the same time, a particular explanation of the "cause of their having drawn upon the agent."

I believe no man, who has been on foreign service, and who has had experience of regimental economy and discipline, could, on reading this charge, really conceive what my accuser meant by saying, that *I suffered* the resident Paymasters to retain, or neglect to issue, the pay of the men. It certainly was the duty of my accuser himself, as Commanding Officer of the regiment, to certify the pay-lists monthly, and to take care that the men were regularly paid. These concerns formed no part of *my* duty, either as Colonel, or as Brigadier-General, and still less as Governor of the island. If there was any misconduct on the part of the resident Paymasters, as is now alleged, the misconduct of the *Commanding Officer*, as well as of the regimental Paymaster, must have been equally culpable, in not applying for timely redress. And, as no such application, nor complaint whatsoever, is so much as pretended to have been made at the time, the Court will judge, whether it is credible, that the resident Paymasters could have been guilty of the wrong imputed to them, without any notice having been taken of it.

It has been clearly shewn, by the evidence produced for my accuser, that the true explanation of this, in one word, is, that the imputation is an absolute fiction. But, at present, I humbly beg leave to direct the attention of the Court to this, that there can be no just ground of accusation against *me*, on account of the conduct of men who are not responsible *to me*, nor I *for them*. The only accusation must lie either against the deputy Paymaster-General, or against the regimental Paymaster, and the *Commanding Officer*.

Upon the grounds which have been stated, it will be considered by the Court, whether this charge ought not to be dismissed as *irrelevant?*

But as, upon my own account, as well as for the sake of Messrs Salton and Kerr, the two gentlemen who acted as resident Paymasters in succession, both of the most respectable characters, and who are implicated with me in this charge, I wish to stand or fall by the *truth* or *falsehood* of the facts charged, I shall request the forgiveness of the Court, while I lay before them, and, I hope, without trespassing long upon their time, the actual state of the issues of pay, during the period comprehended in the charge, by the *resident* to the *regimental* Paymaster.

I left Britain for Dominica in the year 1797, accompanied by Mr Salton as my secretary, recommended to me by the Right Hon. Charles Hope, now Lord Justice-Clerk for Scotland. In 1799, Mr Salton was nominated resident Paymaster in Dominica, without any application on my part, at a time when family misfortune had brought me to Britain; and I have every reason to believe, that he discharged the duties of his office with the strictest accuracy and fidelity until the month of April 1802, when bad health compelled him to quit the West Indies.

On that occasion, Mr Charles Kerr, Paymaster of the 68th regiment, then quartered in Dominica, made a friendly offer to Mr Salton, to act for him as my secretary during his absence; and soon afterwards, Mr Sayers, from his knowledge of Mr Kerr as a man of business, and conversant in accounts, appointed him resident Paymaster, in room of Mr Salton. It is no more than a very ordinary tribute of justice that I pay to Mr Kerr, in stating to the Court, that he never received one sixpence of pay, either as my secretary, or as resident Paymaster.—He generously accounted for the whole to Mr Salton, during the time he acted in his place. The emolument of both situations was only 17s. 6d. *per* day: It was an object of some consequence to Mr Salton, who was not rich: It was none to Mr Kerr; who, notwithstanding the slighting manner in which my accuser has been pleased to treat him, (stiling him, in his late defence, "*a* Mr Kerr," as if he were a low obscure person,) is known to be connected, by blood, with many of the most respectable, some of the most noble,

families in Scotland, and to possess an independent hereditary estate in that country.

I have mentioned, that when my regiment returned from the expedition against the Danish islands, Mr Salton was the resident Paymaster at Dominica. The 68th regiment, of which Mr Kerr was Paymaster, had arrived there a short time before. Mr Sayers, the deputy Paymaster-General, resided at St Pierre, in Martinique, which island was also the residence of the Commander in Chief.

In order to convey to the Court a clear view of the merits of this charge, I shall divide the account I am to give, into two parts:—the *first*, commencing from the arrival of the regiment at Dominica, on 6th July 1801, and ending with the settlement on 26th October that year;—the *second*, comprehending the period from that date to the final settlement on 22d April 1802, two days after which the regiment sailed for Martinique.

It will be recollected, that, agreeably to the regulated mode of issuing pay to troops in the West Indies, a requisition, or pay-note, signed by the Paymaster and Commanding Officer of each regiment, must be presented at the office of accounts, at Head-quarters; upon which the Commander in Chief grants his warrant for payment, addressed to the deputy Paymaster-General. This ought regularly to be done monthly; and such warrants are the sole title, or authority, under which the deputy Paymaster-General, or his agents, can lawfully issue a farthing of subsistence to the Paymaster of the regiment. If they do otherwise, they do so entirely at their own risk, and must submit to the loss, if any, without legal claim for relief. They are therefore justly and fully warranted in refusing any demand of pay by the regimental Paymaster, unless, at the moment he makes such demand, he also presents to the deputy Paymaster-General, or to his resident, the official receipt proceeding upon the Commander in Chief's warrant, as his title to make it. It is likewise perfectly well known and established, that no warrant can be passed for the subsistence of a regiment, until the relative pay-note, duly signed and countersigned,

as already mentioned, has been received at Head-quarters.

Keeping these observations in mind, I have now to inform this honourable Court, that, when my regiment arrived at Dominica *on 6th July*, 1801, no warrant for pay or subsistence had been issued from Head-quarters later than for the month from *25th January to 24th February preceding*. In this situation, I need scarcely add, the Paymaster of the regiment had not a shadow of right to ask a shilling, after exhausting the sum of his last warrant. This notwithstanding, the settlement adjusted by my accuser himself, and finally concluded with his approbation upon the *26th of October* that year, proves, that the real balance due to the regiment on that date, was no more than L. 997 : 15 : 0½ currency. So that Mr Sayers, or his residents, where the detachments of the regiment were quartered, must, so far from *unwarrantably retaining*, have *unwarrantably issued, and advanced* at their own risk, several thousand pounds for the accommodation of the corps.

The case, as immediately connected with the matter of the charge, does not even stop here. It appears, that my accuser had one, and, as far as I am informed, but one dispute with Mr Sayers; which arose from the different opinions they entertained as to the question, Whether the debt of L. 880 : 1 : 4 d., contracted at Antigua, should be charged against the regiment, or not? I do not enter at all into the merits of that question; but I request the attention of the Court to this: 1st, That my accuser finally gave up the point to Mr Sayers; and, 2dly, That it is proved by that circumstance, as stated in a letter under my accuser's own hand, that, so far was that, or any other sum, unwarrantably retained by *Mr Salton*, under pretence that the same was not received from Mr Sayers; on the contrary, it was *warrantably retained by Mr Sayers himself* till my accuser complied with his terms.

Major Gordon's letter of 19th October, 1801, says: "I "could not help being surprised, after what I wrote you "respecting the money drawn at Antigua, that Messrs "Seward and Mackay returned, *without an order from*

"*you*, to receive the pay of the regiment." And afterwards: "As you wanted the Paymaster's security for the "money, he, at my request, has now become responsible "to you for the debt, to be credited to you at a settle- "ment on the 24th December, which, he informs me, "was your own proposal at St Pierre. I trust, therefore, "there will be no farther difficulty with regard to the pay "of the regiment."

Mr Sayers, in answer, writes: "Believe me, I only ac- "ted in conformity with the duty of my office, and my "instructions, when *I from the Paymaster withheld monies.*" And afterwards: "I accede to your wish or proposal of "guaranteeing the money in suspence; the payment of "it on the 24th of December, L. 880: 1: 4 currency;— "the account and vouchers I have forwarded to Mr Sal- "ton by this opportunity; *he will pay the balance direct- "ly.*"

Mr Sayers transmitted, with this letter, an order for the adjusted balance, dated Pay-Office, Martinique, 22d October, 1801, which was presented to Mr Salton, at Dominica, on the 26th, the date of the settlement with Mr Seward; when, in terms of the previous agreement concluded between Mr Sayers and Major Gordon, the subsistence of the regiment was fully paid up to the 24th, and an advance made to the Paymaster, over and above, of L. 540: 14: 3½, to account of the November muster.

On this occasion, Mr Seward signed a doquet to his account, with the Deputy Paymaster-General, and also signed the official receipts for the pay or subsistence of no fewer than *eight months preceding;* none having been given from the 25th of February to the 24th of October 1801, inclusive; although, on this last date, he had drawn the full pay due for the whole of that period, and, including the sum of which payment was postponed, L. 1420, 15 s. 7½ d. over, in advance. It may be noticed too, that, during the same period, great irregularity took place with respect to the pay-notes; in particular, those for the months of *July*, *August*, and *September*, were not presented at Head Quarters till *October;* and, in the mean time, the Paymaster and Commanding Officer were pressing

for money, which, by their own misconduct, they were not entitled to claim.

Having now conducted my account through the period included in the *first* part, in which, however marked by failure of duty on the part of the Major and Paymaster, there does not appear, with all deference to your Lordship and the Court, a colourable pretext for this charge, I shall proceed to inquire, upon what ground it stands, during the period between the settlement of 26th October 1801, and that of 22d April 1802. In the course of this inquiry, I am sorry to premise, it will be my duty to lay open to public view, some facts and circumstances which my Accuser, as well as the Paymaster, might wish consigned to perpetual oblivion.

Your lordship has seen that, upon the 26th October, 1801, the Paymaster received the whole of the pay due to the regiment, on the 24th of that month, exclusive of the debt contracted at Antigua, with the sum of 540l. 14s. 3½d. *in advance*, to account of the succeeding muster.

On the 28th November, 1801, Mr Salton made a farther payment to Mr Seward of 1008l. making, with the prior advance, the sum of 1548l. 14s. 3½d.—The month's subsistence due on the 24th of November, was 1118l. 10s. 2½d. which, deducted from the above sum in the Paymaster's hands, left him a balance for the December account, of 430l. 4s. 1d.

On the 24th December, the 880l. 1s. 4d. advanced at Antigua, was settled by agreement, making the sum, including the above balance, then in Mr Seward's hands, 1310l. 5s. 5d.—From this deduct the pay of the regiment, due on the same day, being 1047l. 7s. 4¾d. a balance remained with the Paymaster of 262l. 18s. 0¼d. to be carried to the *January* account.

Thus far, nothing appears to give the least colour to the charge against the *resident Paymaster*, supposing the conduct of the regimental Paymaster, and of the commanding officer, to have been perfectly correct.—But this is a very imperfect view of the case.

The Regulations, according to which the pay of troops in the West Indies is directed to be issued, have been

mentioned. The deviations from these in the practice of Major Gordon and Mr Seward, prior to the settlement in October, 1801, have also been mentioned. By the agreement between the Deputy Paymaster General and Major Gordon, which produced that settlement, it was expressly stipulated, that these deviations should *not be repeated;* the Paymaster's *title to demand* the pay depending upon a *due observance of his Majesty's Instructions.* Thus, Mr Sayers, in his letter to Major Gordon before quoted, says, "It will be my fault, if they (the Regiment) "receive not, as any other Regiment, their pay regularly. "I hope, *to entitle them to this,* you will see the returns re-"gularly made." Major Gordon was equally explicit. His letter says, "*I will take care* that *no confusion in future* "takes place in the accounts; *that correct Pay-notes* are "regularly transmitted; and shall expect that payments "are as regularly made."

Here your Lordship sees, that Major Gordon took upon himself the immediate inspection, superintendance, and controul, of the Regimental Accounts; and particularly, that he pledged himself for *the regular transmission of correct Pay-notes.*—It is given under Major Gordon's own hand, in his letter of the 19th of October, 1801, to Mr Sayers,—produced in his trial.

It must therefore be surprising, though it is undeniably true, that the Pay-note for November, 1801, (the very first month after the solemn engagement just mentioned) was not certified at the Office of Accounts till the 24th of December, and the *Warrants* for both these months were not presented to Mr Salton before the 8d of January, 1802. This was the earliest date on which the Paymaster was entitled to receive, or on which Mr Salton was warranted to pay, the subsistence for *November.* And yet, nearly a fortnight before; viz. on the 24th of December, the Paymaster had received from Mr Salton the whole subsistence due to the Regiment for both those months, and L. 262 : 18 : 0½ besides, to account of the January Muster. Such was the foundation of the present charge at the close of the year 1801.

The New Year produced no improvement of my Accuser's recollection of the pledge given by his letter to Mr

Sayers. The Pay-note for January, 1802, did not make it's appearance at Head-Quarters, till the 20th March following.

It was passed on the 21st, and the warrant obtained on the 22d, of that month. The Official Receipts could not reach Mr Salton, before the 25th or 26th, which, of course, was the earliest date on which Mr Salton could regularly be asked, or was legally authorised to pay up the subsistence for January. This notwithstanding, Mr Salton, for the sake of accommodating the Regiment, so far departed from his instructions, *at his personal hazard*, as to advance to Mr Seward, between the 24th of December and the 30th of January, no less than L. 1504 : 15 : 9½ : in addition to the balance of L. 262 : 18 : 0¼. before mentioned, making the amount received by Mr Seward on the 30th of January, 1802, L. 1767 : 13 : 9¾. being the *full subsistence of that month, and two-thirds of the February* Muster.

This was the last account which the state of Mr Salton's health permitted him to settle in person with the Pay-master; and I trust, that I shall not express a sentiment different from what is felt by every one who hears me, in saying, that the charge, with respect to that gentleman, is most unfounded, and wantonly unjust. It is matter of wonder, indeed, that Major Gordon should have chosen to hazard an attack against me, through the medium of such an accusation, in which he could have no hope of success, and which, he must have seen, would lead to the disclosure of his own inattention to the duties of his office.

From this time, the business of Mr Salton's department, though still conducted in his name, and, as far as the state of his health admitted, under his superintendence, was chiefly transacted by the friendly assistance of Mr Kerr, till the end of March, when this gentleman took the entire charge upon himself.

After the last settlement with Mr Salton, the irregularity in transmitting the Monthly Requisitions continued, or rather increased. It has been shewn, that the three Pay-notes for January, February, and March, 1802, were all passed at the Office of Accounts, on the same day, 21st of March; the Warrants for which were issued the day following; and, as previously noticed, it would be the 25th

or 20th, before the Resident at Dominica could receive the Official Receipts proceeding on the Warrants, as his authority to pay; and consequently, before the Paymaster was entitled to demand the subsistence even for *January*, and, still more, of course, before he could demand that for either of the two subsequent months.

By authentic documents produced, however, as well as by most reputable testimonies given in behalf of my accuser, it is proved, that, as early as *the 17th*, or at latest *the 20th of March*, the Paymaster had actually received the *whole* of the subsistence of the Regiment *to the 24th* of that month.

Finally, it is completely established by my Accuser's evidence, that, upon *the 22d of April*, the Paymaster received the whole of the balance due to the Regiment in advance, up to *the 24th* of that month.

It will be in the recollection of the Court, that the Resident Paymaster would have had no objection to pay that balance, *or treble the amount*, even on an earlier date, if Mr Seward had presented the Official Receipts for the April subsistence, when it was in his power to have done so.

The April Pay-note, with seemingly inconsistent dispatch, proceeding from causes unknown to me, was passed at the Office of Accounts on the 28th of March. The Warrant was issued next day, and the Official Receipts would probably be in the Paymaster's hands on the 2d of April. Mr Seward, however, neither called upon the Resident, nor transmitted any receipt or order for money, till the 18th of April, nine days *after* the mutiny, when he received a payment of L. 720. currency; and, four days afterwards, the final settlement, previous to the Regiment quitting Dominica, took place, when the total balance due to the 24th, (the settling day for the April Muster) was paid by Mr Kerr.

This closes the *second* part of my account; and, upon a fair attentive review of the facts I have detailed, which have been substantiated by the Prosecutor's evidence, I make my humble appeal to the judgment, and to the heart of every member of this honourable Court, that a more groundless, and a more injurious charge than the one un-

der consideration, has rarely, if ever, been exhibited in a Court of Justice.

In the Narrative I have given, I wished to confine my view to those circumstances alone which appear upon the face of the transactions between the Resident and Regimental Paymasters, *within* the period described in the charge. I was conscious of having no occasion to look beyond these to find just and sufficient grounds for my defence. But, to enable your Lordship, and the Court, to form a true estimate of the merits of this charge, a little farther explanation will be necessary.

On examining different Public Documents, previous to this trial, it struck me, as a circumstance quite unaccountable, that so large a sum as L. 516 : 7 : 7½. should be due to the Regiment on the Pay-list for October, 1801, as both the officers and the men received their pay in the West-Indies. This led me to examine the articles and vouchers, which produced the discovery, that Mr Seward had, in the Pay-list of July, 1801, taken credit for L. 305 : 8. sterling, as the pay of a detachment of recruits under Lieutenant Stoddart, and also for L. 86 : 14. as pay due to Lieutenant Tatum, from 25th June, 1800, to 24th April, 1801, both which sums Mr Seward carried on to the October Pay-list; and thereby charged Government with L. 392 : 2. exclusive of contingencies. These sums being carried to the December Pay-list, at which time the half-yearly contingencies on Non Effective, Postage, and Stationary Allowances, are settled, the whole constituted a balance of L 682 : 15 : 8. The Paylist containing these charges was not attested in the West Indies, till the 6th of April, 1802, nor received at the War Office here till the 15th of July, 1802. But, as soon as it appeared, Mr Hughan, the Agent, a witness cited for the Prosecutor, has deposed, that he credited Mr Seward with the whole of the above balance, to liquidate the debt which Mr Seward owed him.

In the mean time, however, in consequence of a requisition made out by Mr Seward, and *certified to be correct by Major Gordon*, a Warrant was obtained from Sir Thomas Trigge, the Commander in Chief in the West Indies, dated the 22d of March, 1802, in virtue of which, the said two sums of L. 305 : 8s. and L. 86 : 14s. charged in the Pay-list,

together with an overcharge of L. 70 : 12 : 6, for pay to Captain Arbuthnot, *previously received in the West Indies*, were paid to Mr Seward. These sums paid to Mr Seward, in defraud of Government, amounted to L. 462 : 14 : 6, sterling; and it will surprise the Court to be told, that Mr Seward, after having received that sum in the West Indies, upon a requisition signed by *Major Gordon*, did, *with the Major's permission and sanction*, draw upon the Agent here for payment, a second time, of the whole of it contained in the balance on the Pay-list for December, 1801.

Not to enlarge on these circumstances, I have only to request the attention of the Court to this, that, previous to the date of the final settlement on the 22d of April, 1802, between the Resident at Dominica and Mr Seward, the latter had fraudulently possessed himself, with my Accuser's knowledge, of L. 462 : 14 : 6, of Government money, every farthing of which ought to have been deducted from his credit on that occasion. In other words, the issues by the Resident Paymasters, instead of falling L. 1000. short of the sum due to the Regiment, *exceeded it* to the above amount,, of which Government, for the time, was defrauded.

In confirmation of the general result of this enquiry, I have produced a species of evidence to which my Accuser will not object. I mean certain Documents *under his own signature*. Upon the 20th of January, 1802, Mr Hughan, the Agent here, had written to Mr Seward, complaining of his irregularity, and stating the balance due by him, which, it will be recollected, then amounted to L.568 : 11 : 5. This letter was shewn by Mr Seward to Major Gordon; who, upon the 27th of March, 1802, three days after the settling day for that month's Muster, and a week after the whole of it, as I have stated, was paid by Mr Kerr, wrote to Mr Hughan :—" Sir, I have just seen a letter from you " to Mr Seward, in which you animadvert, and *with just* " *cause, on his very irregular mode of conducting his business* " *of Paymaster*. The misfortune is, he is *totally unquali-* " *fied* for his situation."

I will not here detain the Court by unnecessary observations upon the evidence before them, farther than by mentioning, that Major Gordon, in the same letter, expresses dread of blame on account of the irregularity in sending

home the Pay-lists; acquaints Mr Hughan, that Mr Seward had not, as yet, been able to effect a final settlement with the Regiment; but, says he, "when that takes place, the "Governor will not, I imagine, consent to *his acting any* "*longer*."—He adds, "that the *Pay-lists to December*, "1801, possibly to February, would be sent home, by the "next packet; and that Mr Seward's bad state of health, "and the loss of his clerk, had occasioned the delay."

This is demonstrative evidence of the falsehood of the charge. The letter, dated the 27th of March, your Lordship perceives, was written in the very moment of all the pretended, and truly alarming embarrassment, distress, confusion, and discontent, produced in the Paymaster's affairs, and in the dispositions of the Regiment, by the culpable negligence, or more criminal retention of their subsistence by the Resident Paymasters—to which misconduct—*I* was a guilty accessary.

Under the actual pressure, as we must suppose, of these difficulties and dangers, what do we see the Commanding Officer do? He writes a long official letter to the Agent of the Regiment, replete with bitter complaints, and charges of irregularity and incapacity against the Regimental Paymaster, but not a word, not an insinuation, or surmise, to the prejudice *either of the Residents, or of the Colonel*. On the contrary, he rather pays me something like a compliment, by giving his opinion, that *I* would endeavour to get Mr Seward dismissed, as soon as he had effected a final settlement with the Regiment. And, above all, I humbly entreat the attention of the Court to this, that, from the beginning to the end of the letter, not one syllable is to be found, expressive *of want of money*, or *any arrears of pay* due *by the Resident, to the Regimental Paymaster*.

Is it possible, I would beg leave to ask, that the man, who wrote and subscribed this letter, could *bona fide* subscribe to the present charge? The letter, though irreconcileable with the *accusation*, is perfectly consistent with the *fact*, that, several days preceding its date, the *acting Resident* had paid up the *whole of the subsistence due to the Regiment*.

Major Gordon's apprehension of censure for the irregular transmission of the Pay-lists; his promises to send

home, by the early conveyance of the ensuing April Packet, the Pay-lists to February; and his assigning Mr Seward's bad state of health, and the loss of his clerk, as the *sole causes* of the delay; are all decisive of the actual state of the regimental finances, and of the regular payments *by the Residents*. If these finances were deranged as far back as the 30th of October, 1801, by the L. 500 draft, and stoppage of the price of the scarlet cloth; and if, from the month of July, 1801, to the end of April, 1802, the Residents, in succession, were in the habitual practice of withholding the subsistence of the Regiment; why should *Major Gordon* fear to be blamed *for delay* in sending home the Pay-lists? How could he promise to transmit the Pay-lists to February, unless he knew that the Regiment had been fully paid, so as to enable him to make up, and certify them to that period? And why resort to the Paymaster's bad health, and the loss of his clerk, to exculpate *himself*,—if the malversation of the Residents, countenanced or connived at by the Colonel of his Regiment, furnished him with the true, and better defence?

At the date of his letter, 27th March, 1802, no Pay-list had been sent home later than *June*, 1801.—The six Pay-lists for July and December, 1801, inclusive, were at length attested *on the 6th of April*, 1802, and transmitted from the Regiment the day following. Major Gordon's signed Certificate to the last of these, bears:—*I do hereby certify* "on my word and honour, *as an Officer and a Gentleman*, "that I have carefully examined the particulars of the "foregoing Muster Roll, and accounts of sums *paid* by "the Paymaster *within the period commencing the 25th of* "*November*, 1801, *and ending the 24th of December follow-*"*ing*, and that, to the best of my knowledge, information, "and belief, I find them to be truly and justly stated as "to names, rates, *times*, and payments."

It is for the court to consider, which is the more credible evidence of my Accuser's internal conviction with respect to the subject of his prosecution, as far as it is connected with the pay of the Regiment,—his official written *attestation*, as Commanding Officer, given under his hand, supported by the solemn *oath* of the Paymas-

ter :—or, his charge, *contradicted by both,*—and refuted by a variety of other evidence ?

The uniform representations, made at any time to me, of the state of accounts, and condition of the Regiment, were of course in conformity to what the Commanding Officer *officially attested,* and the Paymaster *officially swore to.* And I could have no suspicion, that the information conveyed to me in such a form, through such channels, was at all to be questioned. When I observed the Commanding Officer, whose appropriate duty it is to direct and controul the domestic administration of the Regiment, concurring with the Paymaster, in attesting that the corps was regularly paid,—I could not have imagined, without very strong proof indeed, that the *fact thus attested,* was so far *remote from the truth* as the present charge supposes. In whatever view the matter is considered, my Accuser will find it difficult to prove his innocence. If his charge, in his own mind, is in any degree founded in fact, he is inexcusable in having silently deserted the *time* and *place, when* and *where* he could have best established its truth. If he stands here as a Prosecutor, conscious only of malice and revenge, I do not envy his feelings, but wish him to enjoy, undisturbed, whatever praise he can claim from his conduct.

The charge accuses Mr Kerr of having withheld about L. 1000 sterling from the Regiment, immediately preceding the mutiny. In direct contradiction to this, *my Accuser has proved,* that Mr Kerr paid, even *in advance,* whatever the Regiment was entitled to claim, previous to the mutiny. And I will prove, by the concurring evidence of Sir Thomas Trigge, and of my Accuser himself, that a sum, even greater than that falsely asserted to have been due by Mr Kerr to the Regiment, was truly due by the Paymaster. I will also produce the last Pay-lists given in by Mr Seward, on which there will appear an acknowledged balance due by him to Government, fully adequate to bear me out in this branch of my Defence.

It will occur to your Lordship, that if I, or rather my Accuser, has been successful in proving, that neither I, nor the Resident Paymasters, were instrumental in producing the alledged deficiency of pay to the Regiment, it

is foreign to my Defence to enquire, by whom such deficiency was caused, or whether in fact there was any deficiency at all. The proof being clear, that the money due went into the hands of the Paymaster, it will be for him, and the *Commanding Officer* to explain, in what manner they disposed of it. I confess, I rather look for some explanation on this head, from my Accuser. For, if *want of pay* was the sole, or predominant cause of the mutiny, I am free to confess my present inability to figure a satisfactory mode of vindicating his own, and the Paymaster's conduct.

I have stated that, on the 20th of *March*, the Paymaster was in possession of the full pay of the Regiment due only on the 24th. And, on the 22d of *April*, he was in possession of the full pay not due till the 24th, independent of the frauds on Government, amounting to L. 462 more; after which, the Resident at Dominica had no farther concern or transaction with the Regiment.

Now, my Lord, it is highly material to remark, that in Courts of Inquiry, and in General Courts Martial, which were soon afterwards held, both upon the subject of the mutiny, and on the state of the regimental accounts, where the Paymaster's books and papers were inspected, and where *he* himself, as well as Major Gordon, were examined in person, it was found, that Mr Seward, on the *24th of May*, 1802, had not paid the men to the *24th of April* preceding, though it has been seen, he had in his pocket the money for that purpose *on the 22d of April*.

It was found, moreover, that *previous to the 9th of April*, 1802, the day of the mutiny, Mr Seward had paid *two Companies to the 24th of October*, and two others *to the 24th of November*, 1801, *only*; and the remaining four Companies to the *24th of February*, 1802, in spite of the Commanding Officer's certificate, and Mr Seward's affidavit to the contrary.

Agreeably to what I have now stated, I received two letters from Sir Thomas Trigge, the Commander in Chief, dated at Martinique, the 4th and 7th of June, 1802.

The first states:—

"I am to acquaint you, that the proceedings of the "Court of Inquiry assembled at Barbadoes to investigate

" the accounts of the 8th W. I. Regiment, have been " closed and transmitted to me.—I am now to observe, in " confirmation of what I stated in my last letter, that " neither your presence, nor that of any other person than " those examined, appears to have been at all necessary, " as the Court obtained every information that could be " required.

" It appears that, previous to the mutiny, two of the " Companies had been paid to the 24th of October last;— " two to the 24th of November; and the remaining four " Companies to the 24th of February;—likewise, that " from these periods, the men had not been settled with; " and Mr Seward was indebted to the different Companies " upwards of 1300l. sterling."

In the letter of the 7th of June, Sir Thomas Trigge writes as follows:

" Mr Sayers, the Deputy Paymaster General, has proved, " that the cause of the 8th West India Regiment not be- " ing paid, *did not originate with him*, and, at the Court " of Inquiry held at Barbadoes, it appeared that the " Companies had claims on *Mr Seward* to the 24th of " April, to the amount of 1315l. 5s. 5½d. sterling, *although* " *he had received the pay of the Regiment from the Deputy* " *Paymaster General to that period.*"

With regard to the Paylists, Major Gordon well knows, that it was his duty to take care that these should be transmitted to the War Office *monthly*, or by the *earliest opportunities*, in conformity to his Majesty's Regulations, in order that Government should be satisfied that the men were regularly paid.—But such was his negligence, that the *six* Paylists from June to December, 1801, were not even attested in the West Indies till the *6th of April*, 1802; and your Lordship will hear with surprise, that the whole of the subsequent Paylists, from *25th December*, 1801, to the *24th of September*, 1802, the date of the reduction of the Regiment, were only given into the War Office lately; and upon an inspection of them in this Court, I have discovered, that they have been *made up, certified*, and *sworn to here, at the Office in Great Marlborough-street, by Major Gordon and Mr Seward*, instead

of having been completed *monthly, in the West Indies,* in conformity to His Majesty's salutary Regulations.

These Paylists were not even *then* given in, but by compulsion, in consequence of my repeated representations to the Secretary at War, of the necessity of producing them previous to the present Court-Martial.—The *motives* for withholding these documents will be understood, when the frauds, to the detection of which they led, are recollected; and when the court is farther informed, that Mr Seward has even confessed a balance due by him, on these Paylists, to Government, of no less than 2172l. odd!

Such, my Lord, are the models of exemplary honesty, and *active* virtue, who deem themselves most worthy to assume the patriotic charge of exploring, and holding up to public view all sorts and degrees of imperfection, which their imaginations can trace in the character of their Colonel;—and such is the genuine source, from which the pure and unsullied evidence has issued, upon which my Accuser (himself his leading witness) has called upon this honourable Court, to find me guilty of having, by my misconduct, excited a mutiny in my Regiment!

But, my Lord, I should be very far from doing justice to the cause which I defend, if I were barely to urge my Accuser's *silence* upon the subject of the present charge, during the judicial proceedings to which I have alluded, as an impeachment of his sincerity as a Prosecutor, and of his credibility as a Witness.

In the trial of a black Serjeant, of the name of *Portland,*—a capital trial, for the unhappy culprit's life, on an accusation of his having been actively concerned in the mutiny, Major Gordon acted then, as he does now, in the capacity of Prosecutor of the Trial, and also as a *Witness* for the Prosecution; and he gave his testimony upon oath.

The prisoner, in his defence, *took precisely the ground of the present charge,* so far as to state the *want of Pay,* as one of the causes of the mutiny.—Major Gordon gave his testimony *in contradiction to that averment.*—And I am now to place the *evidence* of my Accuser, delivered before a General Court-Martial at Barbadoes, in counterview with his *Charge* exhibited in the present Trial.

"The prisoner insinuates, (said Major Gordon) that the men were not regularly paid or settled with.—*If any delay ever took place in settling with the men,* it arose from unavoidable obstacles, out of the power of the Officers of the Regiment to prevent or remove.—At one time, owing to some dispute between the Regimental Paymaster, and (*whom,* do you suppose, my Lord?) the *Paymaster General,* the subsistence of the Regiment *was unjustifiably withheld;* (was it, my lord, by the sufferance of the Colonel; by the negligence, or worse, of the Resident Paymaster? No,—) by the latter, (the *Paymaster-General).* But, (were *want of Pay, discontent,* and *Mutiny* among the men, *the consequences?*—far from any thing of the kind,) such (says Major Gordon) were the exertions of the *Commanding Officer,* the Captains, and others paying Companies, that although no subsistence was received by the Regiment for several months, the men experienced *no inconvenience whatever.* Necessaries of every description were furnished; vegetables, and other comforts procured, and *money advanced when necessary or proper."*

A man of honour will not give himself much trouble to enquire, which of these two statements is the more correct.—He will see, that the averments of my Accuser, gravely and judicially made, are flatly contradictory to each other.—And he will not enquire, whether *either,* or *both,* or *neither,* were made *upon oath.*

It would be a trespass upon the time of the Court, to go into an examination of the evidence which my Accuser has produced *in refutation of his charge*—But there are some points, of which my duty compels me to take notice.—The Court heard a great deal *from the mouth of the Prosecutor,* of applications to the Resident Paymasters for money, and of their answers to such applications.

To support his averments, he called Mr Kerr, and Mr Salton, as his witnesses, who have deposed, in direct contradiction to his assertions, that not only were all regular applications for money punctually answered, but large *advances* were *irregularly,* though generously made, at the personal hazard of the Resident Paymaster, for the accommodation of the Regiment.

Major Gordon, in order to prove his assertion as to want of money, produced a private note to him from Mr Kerr, without a date which *he swore* was in answer to a letter from him to Mr Kerr *applying for money*.—Mr Kerr produced that very letter, which *proves* it was *not* an application for money.

My Accuser *deposed*, that, in January or February, 1802, Messrs Kerr and Salton both represented to him, that they had no funds from the Deputy Paymaster General; spoke diffidently of his ability to pay; and that Mr Salton, in particular, said, he should not wish to be in Mr Sayers's situation.

Both Mr Kerr and Mr Salton have explicitly *declared upon oath*, that the whole of that story, told by Major Gordon, *is false*; and it is yet fresh in the recollection of the Court, that those gentlemen, severally, delivered as distinct and consistent testimonies, as ever were given in a Court of Justice, supported by a chain of authentic documents; while Major Gordon's assertions have uniformly been *at variance, either with the writings under his own hand*, or with those *under the hand of his own witness* Mr Seward.

It may be mentioned in point of fact, that Mr Salton was either *in a different island*, or, if in Dominica, at *a great distance from Roseau*, at the time when Major Gordon *represents him to have been there*, stating the complaint against Mr Sayers.

It is said by Major Gordon, that he dispatched Mr Seward to Roseau on the 6th of April, 1802, to receive money for the Regiment; and that he was ordered to return immediately with the money; but, that he did not return, till after the Mutiny, and then without money.—This was distinctly explained by Mr Kerr and Mr Salton. Mr Seward came to Roseau about the time mentioned; but having immediately on landing, taken up his residence in a *tavern*, and not having called upon Mr Kerr, till *after the Mutiny*, he of course made it impossible for him to return to Prince Rupert's, with the money he came for, *before* the Mutiny.

In the trial of Serjeant Portland, Major Gordon asserted, that the subsistence of the Regiment *had been unjustifiably withheld by Mr Sayers*; and this having reached the ears

of Mr Sayers, Mr Kerr, at his desire, waited on Major Gordon, to enquire whether he had said so, or not? And Major Gordon, as his own witness Mr Kerr has expressly deposed, "*denied that he had said any such thing.*"—This is an extremely significant incident in the cause.—Mr Kerr is directly accused of having unwarrantably retained, or neglected to issue pay for the Regiment, under the *false* pretence, that it had not been received from Mr Sayers.—Supposing this charge to be true, Mr Kerr had the strongest interest to confirm Major Gordon's assertion in Portland's trial, that the pay was unjustifiably withheld from him by Mr Sayers; and yet, we see this very man, as Mr Sayers' friend, go to demand from Major Gordon an apology and a denial of that assertion.

The distinguishing character of Major Gordon's several testimonies, given in the course of this trial, is too remarkable to have escaped the attention of the Court.—He has sworn pointedly to a multiplicity of minute circumstances of transient conversations, supposed to have taken place above three years *ago*, between himself and me *alone*, or between us and the *late* Lieut. Mackay, or some other third person since *dead*.—He has even deposed positively to the *precise words* spoken by me on those accidental and distant occasions.

At the same time, with respect to many essential facts, of comparatively recent dates, he has delared his total want of recollection.

Something extremely marked occurred in my cross-examination respecting his declaration given as a witness before the Court of Inquiry at Martinique.—He *swore* that he *could not recollect* what he then said; and it will be remembered by the Court, that he voluntarily assigned as the *cause* of his want of recollection, *the distance of time* since the Court of Inquiry.—This suggested to me the following Question,. "Has his Royal Highness, the Com-" mander in Chief, been pleased to permit the Witness to " peruse the proceedings of that Court of Inquiry within " a short time past?"—To this interrogatory, Major Gordon, after inspecting his letter, applying for that perusal, answered, "*I have seen the proceedings since the 31st Octo-*" *ber last.*"—Thus it appears, that the memory of my Ac-

cuser, like that of his favourite witness Mr Seward, contrary to the common laws of nature, freshens and improves *with time!*

It may not be improper, in this place, to take notice of an objection stated by the prosecutor to some of my interrogatories, that their tendency was to *criminate him.*—I do not know that this objection was ever the subject of deliberation in this Court, or that any opinion was given with regard to it.

But as my Accuser has thrown out such a plea, and may possibly repeat it; I think it proper, in this place, to pray your Lordship's attention to it.

I am here accused of having committed certain offences.—I am entitled to defend myself; and what better defence can be figured than this, that the crime, with which I am charged, was not committed *by me*, but by *another person*?

Is there a man breathing who will say that my defence is not *relevant*, and that I am not entitled to prove, that the man to whom I allude, and not myself, is the guilty person?—And if the person, who accuses me, is himself the guilty person, is there a man breathing who would say, that the guilt of the crime charged, aggravated by the guilt of a false and malicious accusation, ought to protect the real offender from conviction, or to deprive the innocent party of the means of obtaining a just and merited acquittal?

The Honourable LORD WOODHOUSELEE, who, for many years, acted under his Majesty's commission, with the highest reputation, as Judge Advocate for Scotland, and whose Institute of Military Law is the sole extant authority of undisputed character, observes;—"It may "sometimes happen, *that the party accused* may find "it absolutely necessary, in defence of himself, to throw "blame, and even criminality, on others, *who are no* "*parties to the trial; nor can a prisoner be refused that* "*liberty*, which is essential to his own justification.—It is "sufficient for the party aggrieved, that the law can fur-"nish ample redress against all calumnies or unjust ac-"cusations."

This doctrine is founded in manifest justice and sound

sense.—And if a prisoner may defend himself by means, tending to criminate persons who are *not parties* to his trial, much more can he bring evidence in his exculpation, which may fix the very guilt, with which he is charged, upon his accuser.

Another circumstance in Major Gordon's conduct ought not to pass unnoticed, which is, that, contrary to all rule and precedent, he has endeavoured to discredit every one *of his own witnesses*, excepting Mr Seward, who have deposed to any material fact in the cause.—No man will say, that Major Gordon has the least colour of legal right to treat *his* witnesses in that manner.—But every man will draw his own conclusions from the Major's attempt, in violation of law, for that purpose. A man requires no knowledge of law, to be conscious, that when he cites a witness to bear evidence *in his behalf*, he fixes upon that person the strongest possible seal of his confidence, and his conviction, that such person *can* and *will speak the truth, the whole truth, and nothing but the truth.*—If a person, thus *attested*, if I may so express myself, *by the party who cites him*, should deliver a testimony tending to destroy the cause which he was summoned to support, such testimony could not fail to *depress the party*, in proportion as it *exalted the witness*, in the estimation of all good and impartial minds.—But if the Witness, besides deposing pointedly and explicitly from his own knowledge to every fact on which he was questioned, produced, as vouchers of his veracity, incontestable documents, authenticated in such a manner, that no doubt could possibly be entertained, of the facts sworn to, and supported his testimony by these documents, the attempt of a party, in such circumstances, to discredit *his own* parole evidence, must be considered as bordering on desperation.

Without pursuing these circumstances to a greater length, I have now humbly to call the attention of the Court to the concluding, and by far the most important part of this charge, which accuses me of having, in order to vindicate Mr Kerr, "asserted, both in word and writ-"ing, a falsehood unbecoming my rank and the character "of an officer."

My Lord, when I read this accusation, I could not figure to myself a possible pretext, or colour of excuse for making it; and when my accuser came to give his testimony, I own, it was with no small degree of curiosity, that I sat to hear what his meaning or allusion would be.—Had I not determined to lay open to public investigation every part and circumstance of his attack, I might have contented myself with asking the Court to dismiss the article in question, as being framed in direct violation of His Majesty's Articles of War.

The 26th Article of the 16th Section of the Articles of War, expressly ordains, that "Whatsoever Commissioned "Officer shall be convicted before a General Court-Mar- "tial, of behaving in a scandalous or infamous manner, "such as is unbecoming the character of an Officer and a "Gentleman, shall be discharged from our service: *Pro- "vided*, however, that, in every charge preferred against "an Officer for such scandalous or unbecoming behavi- "our, *the fact or facts whereon the same is grounded shall be "clearly specified.*"—The honourable author of the late Treatise on Military Law, whom I have had occasion previously to mention, justly denominates this provision a wise and equitable one. As the crime, his Lordship observes, "is of great latitude of interpretation, and ad- "mitting both of an indefinite variety in the acts, from "which such misbehaviour may be inferred, and possibly "often of discrepancy of opinion with regard to the de- "gree of guilt that may be attached to such acts, it is "evident *that much injustice would be done to any prisoner* "who should be arraigned before a Court Martial, upon "a general charge of scandalous or infamous behaviour "unbecoming the character of an Officer and a Gentle- "man, without any specification of the facts which were "deemed to constitute such gross misbehaviour, and "which possibly the prisoner, if apprised of them, might "either totally disprove, or shew that they admitted of "such extenuation from circumstances, as might alleviate "or altogether exculpate from the charge."

My arraignment was fraught with all the injustice attending a total disregard of the Articles of War; but, for

the reason assigned, I resolved to take no notice of it, if the Court took none.

Major Gordon produced, as the grounds of his accusation, a letter from me to him, dated 17th April, 1802, and told *upon oath*, the following very circumstantial story :—" On the 11th April, 1802, in the afternoon, Co-" lonel Johnstone arrived in the neighbourhood of Prince " Rupert's; understanding he was in the boat, coming " towards shore, I went to the beach to meet him.

" On stepping out of the boat, he took me by the hand, " and said, " this is a sad business;" and shewing me a " bag which, I afterwards understood, contained 100 " doubloons, said, he had brought a little money, which " was all that could be had, and was in effect Mr Kerr's, " the Resident's, own money, as Colonel Johnstone de-" clared; adding, that Mr Sayers, the Deputy Paymaster " General, was in Mr Kerr's debt, at least 2000l."

At the close of his deposition, a question was very properly put by the Court, " Whether, in the latter part of " the second charge, Major Gordon alluded to the conver-" sation with Colonel Johnstone on his landing at Prince " Rupert's on 1st April, 1802 ?"

To which Major Gordon answered, " *That* was what " I alluded to in one part, as I was perfectly satisfied, " that Colonel Johnstone *knew* what he asserted was *false* " with respect to the Paymaster General being in debt to " the Resident Paymaster at that time; and I alluded also " to a similar assertion *in his letter of the 17th April* to me, " at which time I was satisfied the Colonel *knew* his asser-" tion to me was *untrue*."

This is an extraordinary circumstance.—It has been seen, that my Accuser was bound, in obedience to the Articles of War, to have clearly specified the fact, or facts, upon which his accusation was grounded; and the Mutiny Act, 1804, Sect. 24th, declares, that " the Arti-" cles of War shall be judicially taken notice of, by all " Judges, and in all Courts whatsoever."

In spite of this, Major Gordon thought fit, in direct contempt of the authority of his Sovereign, and of Parliament, to charge me with the crime of having " asserted a " falsehood unbecoming my rank and the character of an

Officer, without specifying any one fact or circumstance that could enable me to state a defence, or even to comprehend the meaning of the accusation.

Thus circumstanced, I remained, as I have mentioned, in total ignorance of the grounds of this accusation, until I heard Major Gordon deliver his testimony in this room, which was finally grounded, by the interrogatory from the Court, upon my letter of *17th April* 1802, and Major Gordon's *account of his conversation with me, on my landing from the boat near Prince Rupert's, on the 11th of that month.*

Your Lordship will not require a clearer illustration of the expediency and equity of His Majesty's Regulations, than the effects, which my Accuser's disobedience of them, on the present occasion, has produced.—In consequence of his having withheld from me all explanation of what he meant by, *unbecoming behaviour*, till after the commencement of the present trial, when he came forward to criminate me with *his own testimony*, I was under the necessity of applying for a summons from the Judge Advocate General, to bring an Officer hither from a remote part of Ireland for my exculpation.

I am the more anxious to give the fullest consideration o this charge, that I feel it to be by far the most weighty, the most severe, and what must be the most interesting to any man of honour.

The accusation is twofold; that I stated a wilful falsehood in my letter of 17th April; and that I also stated a wilful falsehood relating to the same subject in my conversation with Major Gordon, on his meeting me at landing from the boat, near Prince Rupert's, on the 11th of April.—I shall consider these heads of accusation separately; and, I hope, without trespassing long upon the time of the Court.—And first, as to my Letter *.

---

* The letter referred to is as follows:—

GOVERNMENT HOUSE, 17. April, 1802.

DEAR MAJOR,

I RECEIVED last night your letter, and I am happy to observe, that you

This document has been read to the Court, and nothing but a sense of duty would have prevailed on me to say a word about it's contents.—I mean fairly to state, since the avowal is extorted from me, that I have cause to be proud of that Letter.—What do I say in it? I address my present Accuser, "Dear Major."—I tell him, "I am happy "to observe that you are securing so many prisoners.—I "shall do every thing in my power for the Officers of "the Regiment;—this you may assure them;—send Se- "ward therefore to receive some money for them.—I have "desired Lieut. Home to collect a few trusty Negroes, "and to go into the woods after any of the mutineers "who have made their escape—assist him with whatever "he wants—remember me particularly to all in your gar- "rison.—I feel much for all of you—I am just sending off "a supply of fresh beef for your garrison."

This is the letter of a man, whom my Accuser, who has produced it, holds up as the guilty cause of the event which that man so feelingly deplores; and upon occasion

---

are securing so many prisoners.—Mr Seward acted very improperly in going to the garrison without leave.—You will order him here directly to receive whatever is due to the Regiment, which appears to me to be only a very small sum, and which must even be advanced by Mr Kerr from his own funds, as the Paymaster General is in debt to him.—I shall do every thing in my power for the Officers of the Regiment; this you may assure them.—Send Seward therefore to receive money for them.—You must send me as full a state as possible of the accounts of the different Companies, as it is reported here over the town, that the men have not received their pay for these four or five months past.

I understand that Henry Dodds cautioned Rivington's servant, not to sleep in his master's room that night, otherwise he would be murdered;—enquire into this circumstance.—Dodds acknowledged to me, that, before he went to Antigua, he understood, that the Creole Negroes were to be murdered by the new Negroes, and then the Officers;—attend to this.—I understand that *Blackman* was the countersign that night.

I have desired Lieutenant Home to collect a few trusty Negroes, and to go into the woods after any of the mutineers who have made their escape.—Assist him with whatever he wants.—Remember me particularly to all in your garrison.—I feel much for all of you.—I am just sending off a supply of fresh beef for your garrison.

Yours faithfully,

A. C. JOHNSTONE.

of which he shews such anxiety, and exerts such endeavours to comfort and solace the Officers and men under his command!—My Lord, I beg pardon—I can only repeat, that what I have now said, never should have been drawn from me, but under the circumstances, and in the situation where I now stand.

The history of Mr Seward's expedition, on the 6th of April, from Prince Rupert's to Roseau, as given by Mr Kerr, need not be repeated. That unhappy person remained at Roseau in the state gently hinted by Mr Kerr, till *after* the Mutiny, when he went away, without having made the application which was the object of his coming, and, as appears from my letter, without leave.

If any confirmation of the clear and accurate testimonies of Mess. Kerr and Salton, corroborated by documents subscribed by Mr Seward, and attested by disinterested witnesses, were at all necessary, I should call your Lordship's attention to this very letter of mine, in which I censure Mr Seward for having gone away from Roseau, without permission, and desire Major Gordon to order him back directly, *to receive whatever is due to the Regiment.*—I add, "which appears to me to be only a very "small sum, and which even must be advanced by Mr "Kerr, from his own funds, as the Paymaster General is "in debt to him."

It is this clause of my letter, which is made the foundation of the present charge against me, of having been guilty of "wilful falsehood, unbecoming my rank, and "the character of an Officer."

That the sum due to Mr Seward was small, the accounts settled with him, approved of by Major Gordon, and explained in the most satisfactory manner in the depositions of my Accuser's own witnesses, prove beyond the possibility of doubt.

The state of Mr Salton's health, at this time, and for some months before, has been mentioned to the Court; and Mr Kerr, who very generously discharged the duties of his office, during his illness, without fee or reward, was occasionally, to a considerable amount, in advance for him.—This might lead me, under an imperfect knowledge of circumstances no ways material, to suppose, that Mr

Kerr had advanced for Mr Sayers, when, in fact, he had advanced for Mr Salton. But, it is plain from my letter, that there was no deficiency of supply for the demands of the Regimental Paymaster, whom I blamed for having gone away without money, and ordered to return directly to receive the whole money due to the Regiment.

I should be sorry to consume the time of the Court unnecessarily.—Does it appear from this letter, that Mr Kerr, in the words of the charge, retained, or neglected regularly to issue, any part of the subsistence due to the Regiment?—Does it appear from this letter, that I had the most distant idea of vindicating Mr Kerr's character in any respect?—Does it appear from this letter, that Mr Kerr had ever acted in such a manner as to require any vindication of his character?—Does it appear from this letter, that I herein asserted a falsehood unbecoming my rank, and the character of an Officer, to vindicate Mr Kerr's conduct in not issuing the money due to the Regiment?

I humbly state these questions, and leave the answers to them with the candour of the Court. Thus far of the *written* falsehood imputed to me, in which I willingly allow, that I perceive nothing worse, on the part of my Accuser, in bringing it forward, than malicious misrepresentation of a letter, which it is incredible he could ever have seriously viewed in the light in which he has held it up to this Court.—But, my Lord, my defence against the other branch of this charge, goes to a depth that is dreadful indeed.—When I speak to *facts*, and to *offences of a known legal description*, I am under the necessity of throwing aside the language of reserve.—I stand at the bar of a Court of Justice, and I can only apply the appropriate appellations to such things, as the necessary conduct of my defence compels me to express.—My Lord, I will prove to the conviction of this Court, by the most clear and incontestible evidence, that the whole of the prosecutor's story of my having asserted to him a falsehood, unbecoming my rank, and the character of an Officer, is an *absolute fiction*;—and *that fiction* having been *judicially affirmed* by the Prosecutor, *upon his oath*, for the purpose of *substan-*

tiating his atrocious charge against me, amounts to a crime which I forbear to name *.

I shall conclude what I had to offer on this charge, by relating, as briefly as possible, the facts I mean to establish in proof of the crime which my Accuser has committed, in the instance just mentioned, for the purpose of giving a colour to a groundless accusation.

On the morning of the 10th April, 1802, an express arrived at Government House, Roseau, from Prince Rupert's to acquaint me, that my Regiment had mutinied in the evening of the preceding day, and had killed several Officers.—This intelligence, singularly enough, was brought by a Serjeant and eight privates, dispatched by the mutineers to request, that I would *immediately* come to Prince Rupert's, to relieve their want of money, and to give them a new Commanding Officer.

I instantly assembled a Council of War, proclaimed Martial Law over the island, and sent dispatches to the Commander in Chief, and to the *Saints,* where a detachment of the Royals was quartered, requesting assistance.

In the mean time, I detached a part of the second battalion of the 68th Regiment, which then formed the Garrison at Morne-Bruce, under the command of Major Hamilton, along with two companies of Militia, commanded by Captains Dodds and Serrant, and a detachment of Artillery, under Captain Brough; with orders to proceed with all possible expedition to Prince Rupert's.

---

* The passage of Major Gordon's deposition here alluded to, and previously noticed, page 66, is this:—

"The Mutiny happened on the 9th April, 1802, at night——On the "11th in the afternoon, Colonel Johnstone arrived in the neighbourhood "of Prince Rupert's, and I understanding he was *in a boat coming on "shore,* went to the beach to meet him.

"*On stepping out of the boat,* Colonel Johnstone took me by the "hand, and said, This is a sad business, and shewing a bag which I af- "terwards understood contained 100 doubloons, said, he had brought a "little money, which was all that could be had;—which Colonel John- "stone declared to be Mr Kerr's own money; and added, that Mr "Sayers, the Deputy Paymaster General, was at least 2000l. in Mr "Kerr's debt."

The whole of that day, and the succeeding night, were employed in providing vessels, embarking the troops, artillery, and stores; and in taking necessary measures for ensuring the peace and security of the town, and seat of Government, during the absence of myself, and the Garrison, in this emergency.

For the purpose last mentioned, I armed such of the inhabitants of Roseau, as I knew to be most deserving of confidence; and it is impossible for me, with justice, to omit mentioning my obligations to the French General La Crosse, who had recently been compelled to fly from the insurrection at Guadaloupe, and who, with a party of officers who had escaped with him, zealously shared in all the fatigues and duties requisite for the public safety.

In the morning of the 11th, I embarked in a schooner furnished by that officer, with about 120 men of the 68th Regiment, having with me Major Scott, Lieut. Colonel Grant, and Quartermaster Nash.

During our short, but anxious passage, I mentioned to these officers, the sole ground of my serious alarm upon the occasion.—The Garrison of Prince Rupert's is situated upon a small promontory, connected with the main land by an isthmus, or marshy neck of land, mostly covered with brushwood, and usually called the *Swamp*.—I had no doubt, that, if the mutineers remained in the *Fort* of Prince Rupert's, they would be unable to resist the force with which I could immediately attack them; but if they retreated, and crossed the isthmus into the country, possessed, as they were, of considerable supplies of ammunition and stores, I confess, on supposition of that event taking place, I trembled for the fate of the colony.—I communicated these apprehensions to the officers mentioned, and expressed my hopes, that precautions would be taken to prevent the consequences I dreaded.

Our passage, in the early part, was favourable; but, as the day advanced, when we were off Point Round, about *four* or *five miles from Prince Rupert's*, the wind veered, and blew right a-head, which determined me to land at that point, and to proceed thence by land to Prince Rupert's.—Accordingly, I gave orders to put ashore there; and leaving Major Scott, and the other officers, to bring

up the detachment, I set off on horseback for Prince Rupert's.—On coming to the river Picard, which was swelled with rain, some negroes, whom I met on the bank, cautioned me against attempting to ford it.—I told them, I was under the necessity of passing immediately, and desired that such of them as were expert swimmers, should attend me in case of accident.—Three or four readily entered the ford along with me, and my horse being soon beyond his depth, and carried by the force of the current to the sea, it was with much difficulty that my faithful attendants, by assisting and directing my horse, enabled me at last, completely drenched, to reach the shore.—I then galloped on to the village of Portsmouth, adjoining to the Garrison, where I met Major Hamilton, who informed me in substance, that a resolution had been just come to, at a meeting of Naval and Military Officers, to endeavour to prevail upon Major Gordon to go to Roseau to see me, with the view that, in his absence, the command of the troops might devolve upon another officer, as they could not get Major Gordon to decide upon any thing.—I dispatched Major Hamilton to meet the detachment which had landed with me at Point Round, and to quicken their march; and I went with Lieutenant O'Neill of the Royal Marines in quest of Major Gordon, whom I found in a tavern, in company with some others.

My first enquiry was as to what measures had been taken to secure the *Swamp;* and finding, to my surprise and alarm, that none whatever had been taken, I immediately directed a detachment of 200 men to be stationed across the isthmus, to guard that important pass.—The detachment, which sailed with me, arrived in safety; and nearly about the same time, a reinforcement of about 80 men of the Royals, with extraordinary expedition, came up from the *Saints.*

I wish to avoid any detail of subsequent events.—Suffice it to say, that, after such measures as humanity suggested were tried, without success, I was under the necessity of employing force, by which the Mutiny was speedily and completely subdued, though not without an unavoidable loss of lives.—I think it unnecessary, and, in any other situation than that in which I now stand, I should

have declined to say, that I accounted my own life as nothing, when the preservation of the Colony was at stake. —I had my escapes.—But these are matters on which I forbear to dwell.

I have given the history of myself through the whole of the 11th of April, 1802, merely to vindicate my character from the foul imputation contained in this charge.—If the history I have given is true, Major Gordon's accusation must be false.—And it is enough for me to say, that I will prove, by the most respectable and unexceptionable evidence, the truth of the facts I have stated.

It being now near three o'clock, the Court adjourned till next day at ten o'clock, when Colonel Johnstone proceeded to open his defence against the *Third* Charge.

THIRD CHARGE.

My Lord President,

Much as I should be gratified by having this public opportunity of meeting my accuser on every point of the present charge, and much as I should be mortified by losing such an opportunity of laying open to public view the relative parts of my conduct, upon which I shall through life reflect with complacency and satisfaction, I consider myself as bound by the paramount duty of respect which I owe to the Court, and to the law, which the Court respects, before proceeding to open my defence on the *merits* of this charge, to state a circumstance which, were I to consult my individual wish alone, I would pass over in silence.

It is a maxim founded in substantial justice, and invariably recognised by the decisions of Courts Martial, that all offences, if fit to be investigated, and tried at all, ought to be made the subject of investigation and trial, as speedily as possible after the time of their commission.

The military law, while it authorises every measure necessary for the punishment of offenders, is most strictly watchful to obviate every possible means of oppression, and to guard the administration of justice from every taint of malice, or of private resentment. The Mutiny Act, therefore, with equal wisdom and humanity, provides, that acts, of whatever nature, done or committed by a military person, and cognizable by martial law, which at

its date had been deemed innocent, or of too slight delinquency for prosecution, shall not, after a long lapse of time, when the evidence in exculpation may be weakened or lost, be urged as matter of arraignment against the offender. The words of the 95th section are these: "*Provided always* that no person shall be liable to be "tried and punished for any offence against any of the "said acts, or articles of war, which shall appear to have "been committed *more than three years before the issuing "of the commission, or warrant for such trial;* unless the "person accused, by reason of his having absented him-"self, or of some other manifest impediment, shall not "have been amenable to justice within that period; in "which case, such person shall be liable to be tried at "any time not exceeding two years after the impediment "shall have ceased."

Keeping this in view, your Lordship will be pleased to observe, that the charge consists of three articles of accusation; 1st, That I employed soldiers of my regiment in labouring my own lands, without paying them; particularly, about seventy or eighty men, for some months *preceding September*, 1801. 2dly, that I neglected to have these men instructed and trained to discipline. The 3d article, to which I shall have occasion to speak afterwards, is not liable to the objection I am now to state.

With respect to the facts charged under those two first articles, I hold myself bound to state, for the information of the Court, that they could not possibly be of a later date than the *end of July*, as the detachment of recruits, of whose wrongs my accuser now affects to be the avenger, embarked from Roseau to join the regiment in that month.

I have mentioned the circumstance of my accuser's silence for years, during which his duty called upon him to take public notice of my deviations from duty, if any such had been made. This is for the consideration of the Court, in judging of the general spirit of the prosecution. But the articles in question, forming the two first parts of this accumulated charge, which my accuser seems to have treasured up for a future day of account, as if he foresaw, that he should have a long arrear of resentment

to settle with me, could not have a possible foundation in fact, upon a later date than *the end of July*, 1801. His Majesty's warrant or commission, under the authority of which the present trial is held, bears date the 10th of August, 1804; that is, a full fortnight beyond the term, within which all right and title to prosecute the supposed offences was prescribed and extinguished.

In stating what I have now done, I beg leave to repeat, that I trust I shall not be misunderstood as meaning, or desiring, to plead *my own* defence, but the defence, eventually, of every gentleman of my profession, for which I do, and ever shall entertain the highest regard; and having simply stated the matter of fact, I shall respectfully leave it, without a word of argument, for the decision of the Court.

To the *first* of these articles there is a separate preliminary objection, arising from the vague and loose manner in which it is framed. The specification of the *place* where, as well as of the *time* when, the facts charged were committed, being essentially necessary towards a prisoner's defence; therefore, no criminal charge ought to be admitted to proof, in which the place, where the alleged offence was committed, is not set forth, and described with all possible certainty and precision. With respect to the circumstance of *place* indeed, it is, in all cases, possible for the prosecutor to be most precise and explicit; and, on that account, such a specification can never be dispensed with in the framing of the charge.

The charge in question states, that I employed soldiers of my regiment in manual labour on my own lands, and on other works. But *what* lands or estates, and *what* works these were, and *where* they were situated, I am not informed. The best *guess* which the charge enables me to form, is, that they were to be found somewhere in the island of Dominica; but whether this, supposing the fact to be so, could answer any one salutary purpose of the specification requisite in every criminal charge, it is for the Court to determine.

How essential soever to consistency and regularity in judicial proceedings, the considerations now mentioned may be, it is sufficient for me to say, that the prosecutor

has not proved, that any soldiers of my regiment worked upon estates of *mine*, or upon other works, *for my benefit.*

The work alluded to was this. Orders had been given to build, or enclose the *Government ground*, adjoining to the Government House, with a stone wall, at the expence of the Treasury of this country. At that time some negroes, newly purchased for recruits, had arrived in Dominica, in the absence of the regiment, then on an expedition against the Danish islands; and those recruits were allowed to remain in the island till the return of the regiment. They were quartered at Fort Younge, close to the Government House, where the wall was building; and I gave orders, on the day after they were purchased, to employ them for two or three hours in the day in picking up stones from the adjacent grounds, and throwing them to the masons.

A barrack was building at the same time for the accommodation of the troops at Morne Bruce, and some of those negroes were employed for the like short period, daily, in carrying wood and lime necessary for the work.

I had two beneficial purposes in view by this. The first was the health of the negroes themselves. It is essential for the health of all new negroes, on arriving from a long voyage, to exercise them moderately. At the formation of my regiment, my constant practice was, agreeable to medical advice, to exercise the new negroes either in running and wrestling, or doing some work for the interest of His Majesty's service; care being always taken to avoid excess. Without proper attention to this, and to feed them on a vegetable diet, the new negroes are apt to become sickly, and to suffer severely by attacks of what is called, in the country, *Mal d'Estomac*. I had the satisfaction of observing the good effects of my method of managing on this occasion.

Next to the health of the men, my object was to procure a saving to Government. To have paid these negroes for the like work I have mentioned, being truly no more *than the degree of exercise necessary for them*, would have been mis-spending the public money. The truth is, that recruits, consisting of new negroes, are never entrusted even with *their own pay as soldiers, till after some*

time, when they come to know the value and use of money. And in the mean time, as the prosecutor well knows, their pay remains in the hands of the commanding officer of the detachment. He also knows well, that it is the common practice in all the West-India islands, to employ even old soldiers (not excepting Europeans) on public works, without any idea or expectation being entertained by the men, that they are to be paid for their labour, when *only employed for a short period.*

As to the benefit which accrued to the public from the employment of those negroes, in regard to building the wall, its extent is ascertained by a certificate under the hand of the chief engineer of Dominica, which was transmitted to the Lords Commissioners of His Majesty's Treasury, in September 1801, and will be produced by a clerk of that department. The officer of engineers certifies, " that *in consequence of the labour having been furnished* " *from the* 8th *West-India Regiment, a saving has been oc-* " *casioned to Government, of L.* 429 : 16 : 6*d currency*, be- " ing the customary expence calculated for labour in the " like service."

This saving is independent of what accrued from the service of the men, in carrying the lumber and lime for the erection of the barrack, which the prosecutor's witness, Captain Ince, has deposed, must have been considerable.

My Lord, I have no desire to arrogate to myself any extraordinary merit for having done what I considered to be my duty to the King I served : but I confess, that I had not any apprehension or suspicion, that by barely acting up to my feeling of duty, I was to expose myself to obloquy and accusation by the commanding officer of my regiment.

With regard to the *second* general point under this head, I have to inform the Court, that these new negroes were without arms, accoutrements, or military clothing, until the regiment arrived at Prince Rupert's, which was on the 6th of July, 1801 ; so that any drilling or discipline was impracticable. I could not send these new negroes immediately into the garrison at Prince Rupert's, that situation being known to be no less unhealthy and des-

tructive to newly imported negroes, than to Europeans. The only regiment quartered there was a black corps, composed of French negroes, with whom I did not wish them to have any intercourse. And, in short, I was attentive to conduct matters in such a manner, as, by establishing the health of the recruits, and employing them on public works, it appeared to me, under all circumstances, to be most prudent and conducive to the interest of Government, and of the service. The Court will be sensible, that the life of a recruit was no trivial object of attention. I believe there have been few black regiments superior to mine, either with respect to the body of men composing it, or to their general character of discipline and good order, antecedent to the unhappy event of the 9th April, 1802. The original cost of the negroes, on an average, was not less than 70l. sterling each man; and every rational person will judge whether the public interest, and the duty of the officers, did not point out the preservation of the health and lives of the men, as the first object of their care. My attention, I willingly avow, was *primarily* directed to those most essential objects; and *secondarily*, to render service to Government by their exertions. I should have been to blame, had I sent them to Prince Rupert's, because a regiment, composed of French negroes, was there, with whom it would have been improper with them to associate, and because the situation was unhealthy. I could get no assistance from the 68th regiment to drill them, because at that time the yellow fever raged in that corps to such a degree, that I could hardly find negroes to bury the dead. None of the non-commissioned officers of my own regiment were in the island to drill them; and the only one of my officers then in Dominica, was Captain Stoddart, the Fort Adjutant, who was also sick, but who attended, as much as his time and health would permit, to the charge of the detachment. As soon as I could procure a vessel, I embarked the men, and sent them to join the regiment, which they did, a short time after its arrival at Prince Rupert's, in the end of July, 1801.

The evidence adduced by my accuser in support of both these articles of this charge, is such as leaves me

little excuse for any attempt to refute. Major Gordon himself has indeed furnished occasion for farther remark upon his style and manner of giving testimony. In the month of July, 1801, he says he saw recruits of my regiment working among canes two or three feet high, in a field in the Government House. I will prove, that there were no canes above ground, when Major Gordon would have it believed he saw them two or three feet high; and farther, that no recruit of my regiment *ever did a turn of work, more or less, in any field, or on any property of mine.*

My accuser's witness, Captain Ince, has deposed, that he saw men whom he has reason to know were recruits, at work on a piece of ground behind the Government House, hoeing the ground, *as he thought,* for cultivating sugar, as he has seen it in cultivation for sugar. This witness refers to an indefinite time in the year 1801.

If he saw any recruits of my regiment in the field he mentions, it must have been in the month of July, 1801, *at latest,* because the recruits, as already mentioned, went to join the regiment at Prince Rupert's in the end of that month. And if so, he could not see them at work among canes in the field he mentions, because there were no canes there at that time above ground, about which people could be at work.

I could not expect that a charge of a grave and serious appearance was to be brought against me, without some shadow of foundation, that might at least serve, in some degree, for an apology, if not for a justification of my accuser. And my attention was the more alive to this part of the accusation, that as far as extra-judicial information reached me, the reports most widely circulated, and most generally credited to my prejudice, went to the particular charge of my having worked the men of my regiment excessively, and without remuneration, upon my own estates.

These reports were not confined to the circle in which my accuser might be known. That they took their rise there, and there alone, I cannot entertain a doubt; and had they continued to float within the sphere of their birth, I should have considered them as far below my notice. But howsoever low their origin was, they rose

upon the wings of malignant fame, to a great height; and spread to a width, that stirred up a storm of clamour and prejudice against me, which I was sensible could only be allayed by the most public and thorough investigation of my conduct.

In this situation, I may be permitted to express some degree of the satisfaction I feel *on the result of my accuser's proof*, respecting the very point which popular malignity so fondly proclaimed to my prejudice, viz. the working of my soldiers on my own property; that Sir Thomas Trigge, on whose account, at my accuser's request, this trial has been delayed for *nine months*, and, in concurrence with whom, all the other witnesses, examined for the prosecution, have deposed that, to their knowledge, not a single man of my regiment ever worked on any estate of mine, nor was I actuated in any measure of my government or command by interested motives.

With regard to the ambiguous deposition of Captain Ince, I have no idea, and surely no desire to suppose, that he said any thing different from what he thought. But I can well imagine that he was under a mistake, which I can easily explain *.

There is a piece of ground, about three acres in extent, *the property of Government*, and attached to the Government House, lying immediately behind it. This piece of ground having been neglected, was overgrown with weeds; and, in order to put it into pasture, it was proposed, as the best

* This gentleman fell into other mistakes in the same year, 1801, which seem to throw some light on the above, and in consequence of which, charges were exhibited against him to the Commander in Chief of the forces. In answer to a letter on the subject of these from Sir Thomas Trigge, Col. Johnstone wrote as follows:

"Sir, "*Dominica, 16th June*, 1801.

"I had the honour of your Excellency's letter of the inst. and am extremely sensible of the trouble which the intended court martial against Lieut. Ince must be accompanied with to yourself, and many to whose care and convenience I should conceive myself happy in contributing. Respect to your wishes, from the papers laid before me by Mr Gloster, and from my own ardent desire, that I may ever have it to boast, that no part of my conduct has been accessary to the ruin of a fellow-creature, I shall wave any farther procedure upon the charges

and usual mode of cultivation practised there, to take a crop of canes, much in the same way as, in this country, we plant a field with turnips or potatoes, before sowing it with grass seeds. On these occasions, the crop raised, though it may not pay the expence of cultivation, has the intended effect of cleaning the ground, and of preparing it for pasture.

It was in the *month of July*, 1801, that, for the purpose now mentioned, I directed that piece of *Government-ground*, to be planted with canes; and to execute the work, I ordered about forty negroes *from my estate, about six miles from the Government House*, to be sent thither, who finished the business in four or five days.

Not one recruit or soldier of my regiment set his foot on that ground, either for that, or for any other work of a similar nature.

The fact therefore sufficiently speaks for itself, and leads to this conclusion, that Captain Ince must either

against Lieut. Ince, on condition of his making an apology, to be inserted in general orders. Mr Gloster will have the honour of laying this apology before you: I have even carefully studied, that it should be so worded, as that Lieut. Ince's character should be saved as much as possible. In justice to myself I can accept of no less. Should these terms not be acceded to, I shall be ready to attend my duty as prosecutor.

"I have the honour to be, &c. &c.

(Signed) "A. C. JOHNSTONE.

"*To his Excellency Lieut. Gen. Sir Thos. Trigge, K. B. &c. &c.*

The following apology was afterwards signed by Lieut. Ince, and, by command of Sir Thomas Trigge, inserted in the General Orders of the army.

"*Head Quarters, Nov.* 1801.

"Charges which were to have been submitted to the decision of a General Court Martial, having been preferred by his Excellency Brigadier Gen. the Hon. Andrew Cochrane Johnstone, Governor of Dominica, against Lieut. Ince, of the 87th foot, Assistant Quarter and Barrack-master General in the above island; and circumstances tending to alleviate the alledged criminality of Lieut. Ince, having been laid before his Excellency General Johnstone, in consequence of which, and of Lieut. Ince's solemn assertion, that in propagating what tended to convey an insinuation against the character and conduct of General Johnstone, he was led away by mistake and misapprehension:

"His Excellency Brigadier-General Johnstone is induced, through this public declaration of his contrition, and anxious wishes to merit pardon for his offence, to pass from those charges which he would otherwise have insisted upon.".

have confounded in his memory the two distinct works, and the two distinct parties of negroes, or must have forgotten the time, and other circumstances to which his testimony is applicable. It will be remembered, indeed, that he candidly went no farther as to dates, than to refer his recollection to the *year* 1801, without pretending to specify even any particular *month within that period.*

Major Gordon, however, with better recollection, pitched upon the month of *July*, 1801, at which time *he saw the recruits of my regiment* working among *canes two or three feet high.* Unfortunately for this singular accuracy of recollection, the canes thus sworn to were only *planted in that month of July*, and consequently could not possibly reach the height of two or three feet *till the month of October or November following!* At the time when they are supposed to have been two or three feet high, in my accuser's eyes, it is physically impossible that they could have been *visible* to the eyes of any other person upon the face of the earth!

Upon the *second* article of this charge, my accuser, as far as I recollect, has not attempted to produce a vestige of evidence.

The *last* article under this charge relates to the accusation of my having occasioned a mutiny, by directing some of the soldiers of my regiment to be employed in cutting wood, and *clearing some swampy ground* in the neighbourhood of Prince Rupert's, without paying the men, and with a view to convert the ground to my own use.

There is something in this branch of the charge altogether so extraordinary, and so contrary to what Major Gordon, upon the common principles which govern the actions of men, could have been expected to bring forward, that I think it necessary to entreat the patience of the Court, while I relate the very singular circumstances of the case.

Immediately adjoining to the garrison at Prince Rupert's, there is the swamp, so often mentioned, covered partly with brush-wood, the damps and noxious exhalations from which have always been considered as the cause of the unhealthiness of that situation.—In May or June, 1801, Sir Thomas Trigge visited Prince Rupert's, and

particularly inspected this piece of ground.—Sir Thomas was of opinion, that it would be essential for the benefit of the service to drain the swamp: and he sent for a gentleman, residing in the neighbourhood of that post, of the name of *Trotter*, with whom he conversed as to the practicability of the work, and invited him to undertake the execution of it.—Of this, it is proper to say, that I had no knowledge but from report, not having seen Sir Thomas on that occasion; but I knew that proposals were transmitted by Mr Trotter, through Sir Thomas Trigge, to Lord Hobart.

With relation to this subject, Sir Thomas, when examined as a witness in this trial, produced a copy of a letter from Lord Hobart to me *, which is recorded in your

Downing-Street, 21st January, 1802.

* Sir,

THE fatal effects experienced by the troops stationed at Prince Rupert's, in the island of Dominica, in consequence of the neglected state of the swampy grounds contiguous to that important post, as stated in the representations transmitted by Lieut. General Sir Thomas Trigge, could not fail to engage my earnest attention, immediately upon my receiving the seals of this department. The object appeared to me in so serious and important a light, that I lost not a moment in addressing you upon the subject. My object was to obtain such information as I conceived you might be able to afford, before I could possibly have had time to examine the correspondence of my predecessor, relative to the island, under your government.

Upon a perusal of your reply, No. 1, of the 12th October, received by the last packet, wherein you merely refer to the correspondence above-mentioned, I was naturally led to expect, that I should discover such information upon the subject, as would fully explain the causes which had prevented a service in its nature so pressing, and so long ago authorized, from being even entered upon.

From various circumstances, you could not but be well acquainted with the complaints which had long been made of the unhealthiness of the post of Prince Rupert's, and the causes to which the evil had been traced, before the instructions transmitted to you, by the Duke of Portland, on the 28th of November, 1798, had reached your hands. Those instructions directed you to execute, in your own name, an agreement already prepared, and intended to have been entered into, by the Board of Ordnance, with Messrs Bell, Gillittle, and White, residing on the spot, for clearing and cultivating, on certain specified conditions, the marshy lands in question.

Mr Bell being dead previously to the receipt of those instructions, as appears by your letter of the 1st of February, 1799, on account of some objections which you therein state against Mr Gillittle, you declined

proceedings, and to which I returned the following answer:

GOVERNMENT HOUSE,
Dominica, March 28, 1802.

"MY LORD,

"UPON my return to Dominica this morning from Martinique, where urgent public business with the Commander in Chief had called me, I had the honour of your letter of the 21st January. The packet is already getting under way, and as the situation of the merchants, relative to insurance, renders it impossible for me to detain her, I must content myself with briefly answering the last paragraph of your Lordship's letter.

executing the agreement; and you requested to be empowered to grant possession of the land mentioned in the agreement, as well as some smaller lots under the same predicament, to any other parties who might be found qualified to fulfil the contract upon the same terms.

In reply to this letter, the Duke of Portland acquaints you, on the 22d of April, 1799, that, in consequence of the circumstances which you had represented of the death of Mr Bell, and the inability of Mr Gillittle, there would be no objection to your granting the lands to persons of property and respectability, who might be willing and equal to undertake their drainage and cultivation upon the terms of the original agreement.

This last dispatch was received in Dominica during your absence from the island, by Mr President Matson, who proceeded with the zeal the subject was so well calculated to excite, to communicate with the engineer department, and to collect the best information which could be procured upon every point connected with it. He was accordingly enabled to transmit, on the 6th of September, 1799, several papers relating to the subject; and amongst them, a memorial from Mr Gillittle, and the heir of Mr Bell, containing a statement, confirmed by Mr Matson, of their ability to have fulfilled the conditions of the agreement which had been proposed by them: the expences they had incurred in expectation of its being executed in their favour, and their desire still to prosecute the undertaking; and further representing the hardship and loss to which they must be exposed, in consequence of a lease of the same lands having been granted by you to Mr Laing.

With regard to this lease, I do indeed find, that, on the 25th of November, 1799, it was directed, by the Duke of Portland, to be cancelled, in consequence of the irregularity of your proceeding, in granting the same before you had received any power or authority for so doing; and because some conditions, which were deemed necessary, had been omitted. But the same letter directed you immediately to execute a

"Your Lordship has conceived the idea, that, in the first place, I have impeded the draining of the swamp at Prince Rupert's Bay, in this island; and, secondly, that by such negligence, his Majesty's troops have suffered unheard of calamity.

"My Lord, I shall find little difficulty in clearing myself from both aspersions, equally unfounded. Next packet

new agreement with Mr Laing, adding a clause to render more secure the accomplishment of the object which Government had in view.

The receipt of the dispatch last mentioned, was acknowledged on the 4th of December, 1799, before your departure for Dominica; and you stated, at the same time, your intention of proceeding, immediately upon your arrival in the island, to cancel the lease granted to Mr Laing, and to execute another agreeably to his Grace's directions.

I have not, however, been able to trace, that any steps whatever were taken by you, during the two years which elapsed from the date of the communication last referred to, either for a renewal of the agreement with Mr Laing, or for inducing any other persons to undertake the cultivation of the lands, except as far as regards the proposal made by Mr Trotter, a copy of which I received from Sir T. Trigge, of undertaking this drainage upon the extraordinary terms (compared with those of the former agreements) of a pecuniary consideration of 5000l. in addition to a grant of the lands. This, I conceive, is the proposal alluded to in your dispatch to me of the 12th of October last, which you had contented yourself with transmitting to Sir Thomas Trigge a very short time before, without having noticed the subject of the swamp at Prince Rupert's, in any of your dispatches to this country, since the year 1799; although you must have received from the Duke of Portland a letter, dated the 10th of April, 1800, of which the following is an extract:

"Mr Secretary Dundas has transmitted to me the enclosed extract of "a letter from Lieutenant-General Trigge, stating, that the draining of "the morass at the post of Prince Rupert's, in Dominica, has been to- "tally neglected (the person with whom you agreed to undertake it, not "having made the smallest attempt towards the execution of it). I can- "not but be seriously concerned at my now having to call your attention "to the mischief that has arisen from the improper and unauthorised "agreement you entered into with Mr Laing for this purpose; as well "as that I should be obliged to take notice of the delay which has ob- "tained, in concluding a more compulsory agreement with him, as di- "rected by my letter to you of 25th November last, which would have "secured the draining of the lots of land to be leased, conformably to "the terms of that agreement, as speedily as possible.

"Although I have stated in that letter, that Mr Laing seems possess- "ed of the means that are necessary to fulfil this undertaking; yet, in "consequence of the neglect which Mr Laing has shewn in this instance, "you are clearly and distinctly to understand it to be His Majesty's

shall convey, in detail, a full explanation of every particular; at present I shall but observe, that if your Lordship has recourse to the monthly returns at the War Office, the mortality at Prince Rupert's, since I had the honour to command here, has perhaps at no time exceeded the mortality of any post in Great Britain for the same period. My observations shall conclude with assuring your Lordship, that, in place of his Majesty's for-

" pleasure, that, in leasing the said swampy lots of land, a preference is " decidedly to be given to such person or persons only, having sufficient " means of performing the agreement, as shall undertake to drain the " said swampy lots within the shortest period; such period to be speci- " fied in the agreement, with a covenant for the Crown to re-enter on the " lots in case of non-performance of covenant on the part of the lessee, " in the manner directed by the letter I wrote you on the 25th Novem- " ber last."

I have entered into this detail of circumstances, as they appear in the official documents deposited in this office, in order, if they have afforded me an imperfect view of the subject, that you may have an opportunity of placing it in its proper light; and abstaining at present from further remark, I shall proceed to convey to you his Majesty's commands, as to the steps now to be pursued for the accomplishment of the important object which has been so long in contemplation.

You are therefore, in the first instance, to call upon Messrs Bell, Gillittle, and White, or their representatives, to know whether they are disposed to enter into a contract for completing this work upon the original terms proposed by them, and to give security for the performance of the same within such a time as may be reasonably required; and it must be previously determined by you, with the concurrence of the chief engineer, or in his absence, with that of the majority of the Council.

If this proposition should not be acceded to, you will, in such case, cause public notice to be given, inviting all responsible persons to offer sealed proposals for undertaking this work; such proposals to explain the terms and conditions under which the party is willing to contract for the effectual drainage of these swamps, and to specify the time within which the contract is to be performed.

If the offers which may be made should appear to be such as ought to be accepted, you are to call upon the proper officers to prepare the necessary instruments; in which, due care must be taken to insert all the usual clauses for preserving the rights and interests of the Crown.

If, contrary to expectation, no one of the offers should be judged admissible, you will then, under the authority hereby given you, represent to the Commander in Chief of the forces in the West-Indies, the failure of your endeavours; and suggest to him whether it might not be adviseable to employ detachments from the black corps, in the execution of a work of so much importance to the general benefit of the island, and, in

ces suffering from my negligence, my exertions have saved the lives of the remnant of the 2d battalion 68th, quartered at Morne Bruce. To this I shall appeal to the testimony of his Excellency General Trigge.

"Conscious as I am of the greatest zeal for his Majesty's service, I stand acquitted with myself and every one here, of the charge which your Lordship has preferred against me; and I am sincerely hopeful, that whatever ideas your Lordship may entertain upon the subject, my letters per next packet will effectually eradicate them.

"I have the honour of enclosing your Lordship copies of letters received from St Domingo yesterday: they need no comment from me, and I have merely to assure your Lordship, that the disturbances at Guadaloupe are much quieted by the event.

"I have the honour to be," &c.

On the 4th of April, 1802, I addressed to Lord Hobart the following letter, pursuant to my intimation in the previous letter, which I have just recited:

particular, to the health of the military stationed for its protection. In the event of its being necessary to have recourse to this last mentioned mode, I cannot entertain a doubt, but that the Assembly of the island will readily contribute their aid, upon a proper representation of the subject being made to them by you.

I have only to add the King's express command, that not another moment should be lost in taking the necessary steps for commencing a work which would long since have been completed, had a due obedience been paid to his Majesty's repeated instructions, arising from the most humane and benevolent attention to the health and comfort of the garrison at Prince Rupert's, and of the inhabitants of that quarter; and the lives of not a few of his gallant troops might thereby have been preserved to their families, and to their country.

I have the honour to be,
Sir,
Your most obedient humble Servant,
HOBART.

P. S. A copy of this dispatch is transmitted by the present opportunity to Lieutenant-General Sir Thomas Trigge; and it will be communicated to his Royal Highness the Commander in Chief, and to the Board of Ordnance, in order that any directions, which they may judge necessary for the guidance of the officers acting under those departments, may be forwarded without loss of time.

"My Lord,

"I had the honour of your Lordship's letter of the 21st of January, (No. 6) which the limited time that the packet afforded, permitted me merely to advert to, in mine to your Lordship, of the 20th ult. (12). The next packet so immediately succeeded, as to prevent my then embracing the subject at fuller length. I now submit to your Lordship a justification of my proceedings, relative to the swamp at Prince Rupert's; relying, that your Lordship will see, that I neither deserve the imputation of procrastinating a business of such consequence, nor of trifling with the health of his Majesty's forces.

"I have perused your Lordship's letter with the utmost attention; in which every progressive circumstance, relative to the attempt at draining that swamp, from my first agreement with Mr. Laing to the present period, is accurately laid down: nor can I throw more light upon that part of the subject, than what your Lordship is already in possession of. Your Lordship is therefore aware, that different means have been tried by me, to accomplish the draining of the swamp: that they have failed, I can merely regret.

The circumstance upon which your Lordship seems mostly to lean, is, that Messrs Bell, Gillittle, and White, were people adequate to the undertaking; and that they would have fulfilled their contract, had I left them the means. His Grace the Duke of Portland's authorising me to annul the contract, is the most satisfactory proof which I can offer your Lordship to the contrary; and Mr Bell being dead, Mr White having left the island, and the circumstances of the survivor, Mr Gillittle, being such as to render it impossible for him to undertake a business of such magnitude; such a view will afford your Lordship but slender hopes, that the survivor and representatives of the deceased will either attempt the execution, or fulfil the expectations of Government, if attempted.

Conscious that Mr Gillittle was unfit for such an undertaking (however the President of the island might have flattered himself with the contrary), previous to my leaving this Government, I executed an agreement with

Mr Laing for draining the swamp. This surely evinced the reverse of want of attention, either to what I conceived to be the wishes of Government, or to the health of His Majesty's forces. Mr Laing afterwards declined engaging upon the terms which Government proposed, nor have I had it in my power to supply the deficiency. Mr Trotter's proposals have since been rejected by Government; they were the only proposals received.

Sensible that that post was by no means proper for white troops, immediately upon my arrival I garrisoned it with blacks; and I have now the honour of enclosing your Lordship a return, certified by the garrison-surgeon of the island, of the number of deaths which have occurred in that garrison, from June 1800, (the date of my return to that island) to the present day. That return must at least convince your Lordship, that however unhealthy the post, the means which I adopted, as a preventive, have proved sufficient. Possibly your Lordship may have taken up the idea, that the 2d battalion of the 68th were quartered at Prince Rupert's, and that the very great mortality which occurred in that regiment, originated from that unhealthy situation: but that regiment was quartered at Morne Bruce, and ever since my representations upon the subject, when Mr Dundas was in office, no Europeans have ever been stationed there. The 8th West India Regiment, alone, now garrison that post; and the pioneers are presently engaged in keeping open the drains in the swamp; their health is good, their exertions will continue; but it will require a considerable sum of money to render these exertions of any consequence.

I have little prospect of procuring that pecuniary aid from the House of Assembly of this island; and without a liberal subscription, your Lordship will find, that both labour and ingenuity will be bestowed in vain. Your Lordship has probably conceived the idea, that a certain profit to the undertaker will attend the draining of the swamp; permit me to assure your Lordship of the reverse. The swamp itself, in the first place, contains but about 90 acres; and, in the opinion of those best qualified to judge, would never, from its produce, recompence any one who would attempt to drain it merely for profit. Your Lordship may

therefore rely, that, in that view of the business, Government must hold out more advantageous terms than what they seem willing to accede to, should they wish an attempt to be made. In any other light, I am perfectly convinced, that were Government to attempt the draining of it upon their own account, disappointment and an expence most enormous must be the issue. It has already been attempted by the engineer's department, who failed in the undertaking.

To evince to your Lordship how anxiously I have been interested in the whole of this business, I prevailed upon the Prefect of Gaudaloupe, to extract and translate into English such parts of a larger composition of his, upon the subject of draining swampy lands, as might be useful to undertakers. One of these pamphlets I now inclose to your Lordship. It may also serve to shew, that the task of draining such a morass cannot be trivial, either in point of labour or expence *.

Your Lordship may rely, that I shall most pointedly attend to your instructions. If my endeavours prove, as hitherto, unsuccessful, I shall at least convince your Lordship, that no blame can be imputed to me.

I have the honour to be, &c.

(Signed) A. COCHRANE JOHNSTONE.

Return of the Number of Deaths in the Black Corps stationed at Prince Rupert's Head, in the Island of Dominica.— From 20th June, 1800, to 20th March, 1802.

Regiments.	Deaths.
9th West India - - -	7
8th West India - - -	8
Total	15

* Since the time when this letter was written, Colonel Johnston's ideas have been so completely verified, that Governor Prevot has actually paid to a contractor for draining this swamp the sum of 18,000l. sterling!

N. B. One of the above men, of the 9th West India regiment, arrived in a state of great debility from St Lucia; three or four of the deaths were white non-commissioned officers.

OBSERVATIONS.

The post of P. Rupert's Head is justly considered one of the most unhealthy spots in the West Indies, and has always proved remarkably so to the British troops stationed there. An endemic fever, from marsh exhalations, generally prevailing more or less at all seasons, attended with great fatality.

The black troops seem scarcely affected by it; any fevers that occur are slight intermittents, which go off in a few days, their prevailing diseases being dysenteries and ulcers.

(Signed) C. WILLIAMSON,
Surgeon to the Garrison.

In conversing with Sir Thomas Trigge on this subject, when at Martinique in the latter end of March 1802, I took occasion to submit to his Excellency, that, as Lord Hobart had not authorized any expenditure of money, it would be hard to employ the soldiers *in digging or draining the swamp;* but that, as my regiment had always been accustomed to duties of fatigue, when the service permitted (as Col. Shipley, then present, could certify), parties of the men might be employed in cutting the brush-wood, on being allowed an *extra* quantity of rum; and to this I certainly understood Sir Thomas made no objection.

Accordingly, on my return to Dominica, I sent an official order to Major Gordon, which he ought to have in his possession; requiring, that when the duties of the garrison should permit, he would employ some of the men in *cutting the brush-wood,* so as to allow the sun to penetrate and dry the ground, and to issue an *extra* allowance of rum for this labour. I give the substance of my order, according to my recollection; *but the precise terms* of it would have been ascertained by producing the order itself, which I have in vain called upon my accuser to do.

In the mean time, I shall produce an exact authenticated copy of my order, written on the same occasion to the late Mr Roberts, ordnance storekeeper at Prince Rupert's, which was inclosed in my order to Major Gordon, and *sent by him* to Mr Roberts, and Mr Roberts's answer; from which the Court will perceive, that my instructions, as to the employment of the men, *were expressly limited to the cutting of brush-wood,* and that any operation of *digging or draining* was to be performed by the ordinary *labouring negroes,* hired by the ordinance, who were *not soldiers,* and not at all attached to my regiment.

Government House, 5th April, 1802.

"SIR,

"Major Gordon *has undertaken* to order a detach-
"ment from the 8th West India regiment, daily to en-
"deavour to improve the state of the swamp. You will
"therefore issue from your stores whatever tools may be
"necessary for the working parties, taking the Adjutant's
"receipts for the same. Considerable progress may be
"made during *this dry weather* in cutting the whole of the
"*brush-wood,* which will allow the sun to penetrate, and
"will certainly improve the state of the swamp. The
"*brush cutters* (that is, the common labourers, not soldiers)
"should all now be employed in endeavouring to *widen*
"*the mouths of the drains.* I beg you will send me an ac-
"count of the number you employ."

Mr Roberts's answer to me is as follows:

"SIR,

"I am honoured with your Excellency's letter of
"the 5th instant, and shall attend to your order, in is-
"suing to Major Gordon such tools as he may require in
"clearing the swamp. With respect to the negroes em-
"ployed in cutting brush-wood, *and clearing water*
"*courses,* I beg leave to remark to you, that they are em-
"ployed in the engineer department, under the orders of
"Lieut. Wright: My authority, with respect to them, is
"merely during his absence only, as senior ordnance of-
"ficer of that post. I shall, however, in the mean time,
"attend to your directions, and shall expect some infor-

"mation from Lieut. Wright respecting this service. "The number of negroes employed in this service are *ten* "*men.*

"I have the honour to be, &c."

The Court will here perceive, that my direction, as to the employment of the men of my regiment, was exclusively referred *to cutting the brush-wood;* and any operation of *clearing the swamp,* or *digging drains,* was to be performed by the *negroes employed in the engineer department in clearing water courses.*—This direction was given to Major Gordon himself, who now charges me with having given a direction which never existed, for employing the men *in clearing the swamp.* He also would aggravate his accusation, by complaining, that the men were not paid for their work. But the fact is, as has been shewn, that the necessary tools for the work were not issued, *at soonest, till the 7th of April;* and as the mutiny broke out on the evening *of the 9th,* it is impossible that Major Gordon could have employed the men for more than a part of *two,* or at most *three days,* and that only during the evening.—How then could the men either have been paid, or have expected payment, *previous to the mutiny;* previous either to the work being done, or to Major Gordon having even had an opportunity of certifying the accounts, so as to entitle the men to payment, had it been necessary or intended to pay them?

I shall now take the liberty of making one reflection, suggested by a general view of these charges. The men of my regiment are represented by Major Gordon, as having been worked up to such a degree of discontent by my misconduct and oppression, from a period *some months prior to September* 1801, as to have at last broke out in mutiny, accompanied with acts of desperate violence and outrage, *upon the 9th of April,* 1802. During the whole of that period, the regiment was under the immediate inspection of Major Gordon; to whom the general discontent, as well as the causes producing it, must have been sufficiently known. Let me ask, then, if such was the case, whether it was not the duty of the commanding officer to give timely notice to his Colonel, who was also the Gover-

nor of the island, of the first symptoms of dissatisfaction in the corps, and to have taken the earliest measures for preventing its increase, and for guarding against its breaking out in the fatal events which happened on the 9th of April? And if, as is undeniably true, Major Gordon never gave me the least hint of any discontent having, during the whole of that period, shewn itself in the regiment, is it not a fair supposition, and surely a favourable one to Major Gordon, *as commanding officer* of my regiment, howsoever unfortunate for him in his capacity of *my accuser*, that no such discontent truly existed?—More especially, it is fair to suppose, that the disposition was very remote from discontent, or dissatisfaction, upon the 6th and 7th of April, 1802, when Major Gordon voluntarily and deliberately undertook the execution of the works for improving the swamp; and proceeded in it, without hesitation, without apprehension of dissatisfying any of the men he employed, and without signifying to me the least objection of any kind.

Your Lordship will pardon me for making an observation, which I am sensible is superfluous in the place where I now stand. The chief danger attending the crime of mutiny (the most heinous crime of which a soldier is capable) proceeds from the *numbers* who may co-operate, or become accessaries in the commission of it. Hence the very strict and wise military regulations, to prevent the spreading of a contagion so dangerous in its nature, and frequently so dreadful in its consequences. And hence it is the indispensable duty of every soldier, and peculiarly so of every officer commanding a regiment, to exert his best and strongest endeavours, in repressing the first symptoms of the slightest disposition to such a monstrous and mortal disorder, both by his personal influence and power, and by giving immediate intimation of every circumstance that may come to his knowledge.—The breach of this duty, by inattention, silence, neglect, or careless indolence, though without any criminal inclination to abet or connive at the mutiny, is, on principles of manifest expediency, held to be equivalent to positive approbation of the mutinous designs, and is declared to be punishable accordingly.

Thus, by section second, article fourth, of the Articles of War, it is enacted, " That any officer, non-commissioned " officer, or soldier, who, being present at any mutiny or " sedition, shall not use his utmost endeavours to sup- " press the same; or coming to the knowledge of any " mutiny, or intended mutiny, shall not without delay " give information thereof to his commanding officer, " shall suffer *death*, or such other punishment as by a Ge- " neral Court Martial shall be awarded."

I am far from meaning to insinuate, or desiring that this Court should entertain a suspicion, that the commanding officer of my regiment was in any degree implicated in a capital offence, of the description I have just now read.—But I beg leave to state as a fair inference, and an honourable one to Major Gordon, as an officer, that his uniform silence, and total want of precaution, or of any defensive expedient, till the actual breaking out of the mutiny, are tolerably convincing proofs, that *no appearances of discontent, or of mutiny, had previously existed in the regiment under his command.*

I humbly apprehend that it is extremely material in this cause, and will be highly satisfactory to the Court, to know precisely the nature of the work in question.—I cannot give a more accurate description of it, than is done in a letter to me by Colonel Shipley, chief engineer in the West Indies, who was sent by Sir Thomas Trigge to inspect the swamp. That letter is dated at Dominica, September 5th, 1802, and is in these words; " Sir, I am fav- " oured with your Excellency's letter, requesting my opi- " nion respecting the quantity of land near the post of " Prince Rupert's Head, that was *cleared from brush-wood,* " by the 8th West India regiment.

" *From personal inspection* of the ground, I am enabled " to say, that *twenty negroes* would *with ease* perform *the* " *same work in three or four days, being a dry spot, and* " *covered with underwood.*

" It is incumbent upon me to add, that from every in- " formation which it was in my power to obtain, upon my " late visit to Prince Rupert's Head, *I have not the least* " *reason to believe that the men of the regiment were at any* " *time employed in clearing or widening the drains upon the*

" Isthmus, which I understand has been most unjustly attri-
" buted to having been done by your Excellency's order.

" I have the honour to be, &c.

It is thus ascertained, by the most accredited evidence possible to have been obtained on such a subject, that twenty negroes could easily perform the work in question *within the space of three or four days.* The men employed by Major Gordon worked a part of three successive days, during the evening; and, as little progress was made, the number employed must have been very small, and the time of working each day very short. That this could have the least tendency towards exciting to mutiny, it seems impossible to believe; and if the trials of different mutineers upon your table are examined, you will find sufficient evidence of complaints among the men of *want of money*, but none of the service performed, either by enclosing the Government ground, or by carrying the materials for the barrack at Morne Bruce, or by draining the swamp in question.

The truth is, that the cutting of the brush-wood was considered by the soldiers in the light of a pastime, where, for a couple of hours playful occupation in cutting brush-wood in the afternoons, they were to have each the allowance of a quantity of rum, *more than equal to any pay*, granted on more considerable works. Gentlemen, who have been in the West-Indies, know, that payment in rum is at all times equally, or rather more acceptable, to negroes, than payment in money. They value the latter only in proportion to the quantity of rum it can procure; and, as the allowance in kind is generally liberal, they naturally give it the preference. Accordingly, as often as there happened to be occasion for exercising the men of my regiment in duties of fatigue, the difficulty was not as to who should be required or compelled to serve, but as to those, whose *offered* services it was necessary to decline. Major Gordon's witness, Lieutenant Greenshields, has deposed that, upon the very day of the mutiny, the men, employed in cutting the brush-wood, went to their work merry and jovial, apparently delighted with their work, rather than discontented with it.

I beg to be understood, that, by not taking particular notice of the deposition of Sir Thomas Trigge, I mean not in the most remote degree to insinuate, that there can be a more respectable evidence. The sole ground and reason of my placing no material stress upon it, is what must occur to your Lordship, and every honourable member of this Court, that Sir Thomas professes to have no opinion upon the subject, but what was founded on report, and information, from sources, and through channels, of which I was ignorant;—and he candidly deposes, that he merely gives an *opinion* founded on that hearsay. On the other hand, Col. Shipley, an intelligent professional man, from whom, I humbly presume, Sir Thomas Trigge would have taken information and advice, gives *his opinion*, not founded on hearsay, but formed in consequence of personal inspection of the ground and work performed. Sir Thomas Trigge candidly declared, that he was on his passage to Europe at the date of Col. Shipley's letter, and consequently had not the benefit of communications he would otherwise have received from him.

Sir Thomas Trigge, whom I wished not to mention at all, was naturally anxious, in giving his evidence, to prove his own innocence. This, as far as I know, was never questioned. But I should have wished to see those reports, on the authority of which that respectable witness thought himself justified in saying before this Court, that my order, which Major Gordon, to whom it was given, says he has not, and which Sir Thomas never saw, was, in his opinion, the immediate cause of the mutiny. If I rightly recollect, Sir Thomas, in this part of his deposition, speaks of the order he supposes I gave, to have been one, commanding the soldiers generally to work in the morass without pay. No such order as this was ever issued by me.

Sir Thomas farther says, that he considered the work which I had ordered to be executed, not to fall within his description of work which I had a right, by my own authority, to sanction.—Fortunately, this witness, whose opinion, though *not evidence*, is justly entitled to high respect, assigns his reason for thinking as he did;—for thinking that the order I had issued exceeded my inherent

powers. Sir Thomas explicitly told the Court, that he always looked upon the cutting of the brush-wood as *the commencement of clearing or draining the swamp*, and *therefore* a considerable duty in the opinion of the soldiers.

Here your Lordship sees the true foundation of the opinion given by Sir Thomas Trigge, and the total mistake under which he was with regard to the nature of my order, and with regard to the species and intention of the work in which the men were employed. He appears clearly to have been carried away by an idea, possibly enough suggested by busy and malicious informers, that the great and extensive plan of completely draining the swamp, at an immense expence of money and labour, had been commenced by my orders, and understood by the men of my regiment, in the same light in which Sir Thomas had been made erroneously to imagine they did understand it.

If Major Gordon had thought fit to preserve the order I gave him, with the same care that he has preserved writings of far inferior consequence, your Lordship and the Court would have had the best evidence possible, that the grounds of Sir Thomas Trigge's *opinion* were altogether unreal and imaginary. You would have seen, that neither I intended, nor could any man of my regiment for a moment suppose that any thing was intended, farther than to employ small parties in succession, without in the least degree interfering with their ordinary military duties, in cutting brush-wood for two or three hours in the afternoon, for the benefit of His Majesty's service, and the preservation of the health of the garrison; in recompence for which salutary and most important employment the men were to be paid, not in money, but in an allowance of what they always preferred to money—of a quantity of rum to each man, more than equivalent to the stated pay allowed to men employed in the most considerable works of fatigue.

It will occur to the discernment of the judges whom I have the honour to address, that had the order been issued, and understood by the men to be of the alarming nature supposed by Sir Thomas Trigge, the effects must have immediately appeared in the alarm or discontent,

which such order was, in his opinion, fitted to excite; but no symptom of the kind is so much as pretended, even by my accuser, to have appeared; and he has even brought forward Lieutenant Greenshields to swear, that, on the very afternoon of the 9th April, the fatigue party went out to their work with expressions of merriment, jovialty, and gamboling, as people in a happy frolic mood are naturally seen.

Without enlarging on these circumstances, I proceed to a branch of evidence, of a more positive, a more impressive, and a more conclusive nature, than any *opinion*, how sound, and how respectable soever. I here allude to the trials of the unfortunate mutineers whom Major Gordon selected as the fittest examples for punishment. These trials are upon your table; and if the multiplicity of weighty concerns had admitted of Sir Thomas Trigge's attention being directed to them, I can say with confidence, from what I know of the understanding and sagacity of that officer, he would there have discovered full evidence of the principal, the immediate, I had almost said, the sole cause of the mutiny, having been no ways connected with any order of mine, or with any operation in cutting brush-wood. He would have seen, that not the duties—but the wants, the necessities, the misery of the men, from deprivation of support, and of the bare means of living, were the true and undeniable cause of that event, which every friend to humanity, every friend to good order, and to the service of his Sovereign, must for ever deplore.

The prisoner, in one of these trials, was *Serjeant Dodds*, of whom Major Gordon, being *duly sworn*, gave the following character before the Court: "That he has known "the prisoner, a serjeant, since he joined the regiment "in July, 1800: his conduct has been uniformly correct "and meritorious; he was respectful to his officers, and "supported his authority among the men superior to any "other of the black non-commissioned officers in the re-"giment: and such was the confidence he placed in "him, that in the absence of the serjeant-major, he was "appointed to that duty, in preference to any of the "white non-commissioned officers; he has witnessed his

" zeal and courage on many occasions, and would have " trusted his life with him in any such situation."

In addition to this high eulogy, I may remark, that the very circumstance of Dodds' being a *serjeant*, and, as such, *personally exempted* from any share whatever of the manual labour in the swamp, is real evidence that he could not have been influenced by *that cause* to take an ostensible lead in the mutiny. Accordingly, a question was put by the Court to an intelligent witness of the name of Fraser, a serjeant also, " Whether he ever heard Serjeant " Dodds say to any of the men of the regiment, that they " were employed too much on fatigue?" To which the witness answered, " He never heard him say so." But almost every witness examined speaks to complaints having been heard about their *money*; and the prisoner himself, in his defence, states, that on the night of the mutiny he was in the barracks about 7 o'clock, when one of the men, by name Starr, came to him and said, the men meant to go and complain *about their money*. And without detaining the Court with unnecessary quotations from the evidence in your possession, I have only to state generally, that the outcry in the regiment at the breaking out of the mutiny, as appears from those trials, arose from *distress* (whether real or affected, I have no occasion to enquire), *from want of pay*.

There is, however, one trial to which I formerly alluded, which is too important, and bears with too much weight upon the evidence in the present case, to be suffered to pass without the most attentive and marked observation: I mean the trial of Portland; who, like Dodds, was also a *serjeant*, whose conduct had ever been meritorious in an exemplary degree, and who, as a serjeant, being personally exempted from manual labour, could not be supposed actuated by any feeling of hardship from the duty of cutting brush-wood.

Major Gordon, as previously noticed, was the prosecutor in that trial, as well as a witness, in which capacity he gave his testimony on oath, at great length, against the prisoner.

The defence gives a particular enumeration of the grievances complained of at the time, which it will not

be imagined were understated, in order to palliate the guilt of the prisoner's accession to the mutiny. The allusion to the subject of this charge, to which I humbly pray the attention of the Court, is in these words: "We "were employed *cutting wood* in a swamp, and received "no allowance whatever for our labour."

Now your Lordship will remark, that even this man, when arraigned for his life, and endeavouring to set up the strongest defence that was possible to be devised for his exculpation, does not pretend that the men were employed *in digging or draining the swamp*, but merely *in cutting wood;* and so far the present charge is not supported, but, on the contrary, is in effect contradicted by the strongest statement which one of the men, on a trial for his life, found himself warranted to make.

Such is the evidence to be collected from the judicial declaration of the prisoner in that trial.

But, my Lord, I am now to lay before your Lordship and this honourable Court, the still more pointed, explicit, and conclusive evidence afforded by the prosecutor himself, in the statement delivered by him in the same trial: and it will be observed, that Major Gordon, on his request, obtained no less than five days to prepare his reply to the prisoner's defence. Nor is this all; for, after having had two years to reflect coolly on what he there said, he solemnly reaffirmed the whole in the opening of his own defence on his late trial, at my instance. On this occasion, after admitting that he then "pledged himself "to prove by most respectable evidence every circum-"stance he had stated on Portland's trial," he added, "*I earnestly refer the Court to the* reply *which I made to* "*the defence of the mutineer. I think now, as I thought* "*then*, that it was false."

Such being my accuser's recent testimony to the *truth* of his reply, and such being his wish, to submit the subject to judicial review, I ought not to suspect that I shall do any thing unpleasant to him, by laying before the Court, in his own words, as much of his testimony now referred to, as bears directly upon the subject of the present charge.

"The prisoner, Serjeant Portland," said Major Gor-

don—" The prisoner *assigns as a cause of discontent,* that " the men were employed *cutting brush-wood* in the " swamp, and *not paid* for their labour. It is true, that " by an order from B. General Johnstone, commanding " in the island, a fatigue party was employed, for *two* or " *three days* previous to the mutiny, in *cutting brush-wood,* " that the sun might have more effect in drying the " swamp, which was known to be *of the greatest im-* " *portance to the health of the troops* in the garrison. " Whether or not they were to be paid, must rest with " Government, as it was a PUBLIC WORK.

" I received no directions on the subject; if the order " was improper, the person who gave it must be answer- " able. All I can say is, *if any reluctance or dissatisfac-* " *tion had been discovered on the part of the men, I would* " *immediately have suspended the work, and reported to* " *Brigadier General Johnstone; but nothing of the kind* " *appeared.* The prisoner observes it must appear strange, " *if the grievances he stated existed, that no complaint was* " *ever made on the subject, to any officer in the regiment.* " Strange indeed it will appear, to those acquainted with " the dispositions of black soldiers, particularly of our " regiment, among whom *it was the practice to carry* " *every complaint (the most frivolous)* to the command- " ing officer, often without applying to the officer of " their company, as the rules of the service require. " This practice was no doubt highly improper, and gave " umbrage to officers, and was frequently tried to be " checked. But howsoever improper the practice, it is " strong proof, that so far from dreading punishment, as " the prisoner asserts, they both expected, and were ac- " customed to meet with redress from the commanding " officer, when applied to. A further and very convin- " cing proof, that the *grievances* stated by the prisoner " *never existed,* and that his assertions are false and " groundless, is, that the creole soldiers, who, from their " superior knowledge and information, must have been " the first to have discovered any imposition, or be sen- " sible of any injustice done them, *never murmured,* never " complained; but, on the contrary, conscious that all " manner of justice was done them by the officers, and

" sensible of the *happy lot they enjoyed,* under their pro-
" tection, they continued to a man faithful to the last,
" and fought gallantly by their side in subduing the mu-
" tineers."

It would be difficult to figure a more positive and direct refutation of the charge, than is given by my accuser in the passage now read; and I have only farther to pray the attention of the Court, to the general view of the essential matter of the present accusation, given by him on the said public occasion, and in the same solemn manner, which is especially entitled to consideration, as far as it contains an enumeration of the causes which my accuser knew and believed to have any operation or tendency towards exciting the mutiny.

In the sequel of this reply, he proceeds in these words: " I beg leave to state to this Court, what I conceive to " have been the principal causes of the mutiny. One is " mentioned by the prisoner, which I believe to have " had considerable effect. *I mean, the dread of being sold* " *as slaves when the regiment came to be reduced; an event* " *which was generally believed to be at no great distance.* " That this opinion was entertained by the men, we have " since ascertained, beyond a doubt. *The idea was start-* " *ed in the House of Commons, was cherished by the planters,* " *ever hostile to black regiments,* and propagated among " the corps in derision; and I make no doubt but the " fatigue party in the swamp was, by the more knowing " ringleaders of the mutiny, held up to the ignorant " crowd, as a prelude to their sale and slavery. But " what I conceive still more forcibly led to the mutiny, " was the successful insurrection of the negroes in Gua- " daloupe, with every particular of which they were made " perfectly acquainted by the slaves of the numerous " emigrants who crowded into Dominique, but more par- " ticularly by the residence of a considerable detachment " of our regiment for many weeks at the Saints, and " among them some of the principal ringleaders in the " mutiny. There they had constant intercourse with " some hundreds of French, and negroes from Guada- " loupe. Thence they returned only a few weeks before " the mutiny broke out, and there, some of them, as we

" have been since informed from the best authority, let " fall expressions, predicting the horrid massacre which " took place at Prince Rupert's.

" The idea of revolt once suggested, the facility of " execution was evident, and the success beyond a doubt. " They were five hundred strong, with arms and ammuni- " tion. The number of whites in the garrison scarce ex- " ceeding *twenty*, the greater part unprovided with either " the one or the other. Once masters of the fort, they " might bid defiance to all the troops in the island. The " fort was, as they well knew, supplied with provisions, " ammunition, and stores, for many months, and there was " no military force within thirty miles. In this situation, " with such hopes and prospects before them, it is no " matter of surprise, that those men, *naturally savage and* " *barbarous*, should, without any cause of complaint or " provocation, revolt against lawful authority, bereft of " the means of supporting itself, and, from lust of domi- " nion and independence, commit those shocking enor- " mities which took place during the mutiny.

" It is with regret I have trespassed so long on the pa- " tience of the Court. To say something to disprove the " false assertions and malicious insinuations of the pri- " soner, was absolutely necessary, and I trust, what I " have stated has satisfied the Court. I beg leave to " add, that what I have advanced *I know to be the truth,* " *and nothing but the truth; and that, if deemed necessary* " *or proper, I can substantiate every part of it, by the most* " *clear, positive, and respectable evidence.*"

Such are the causes of the mutiny, which my accuser judicially, and very gravely assigned, recently after that unfortunate event, when the whole circumstances were fresh and strongly impressed on his own mind, which he pledged himself to establish by the most respectable evidence, and which evidence was then within his immediate reach, and easily attainable to the full extent required. Throughout that list of causes, there is not to be found a single word—no—nor the most distant allusion to the L. 500 bill, drawn by Mr Seward—to the L. 142 stopt from the subsistence of the regiment,—to the retention, or neglect of the resident Paymasters to issue the

pay with regularity—to the working of the men on any lands of mine, or otherwise for my interest—nor, upon the whole, the slightest insinuation against the conduct either of the resident Paymasters, or of the Colonel, in any respect whatever.

On the contrary, they, as well as he, are honourably acquitted of all misconduct or accession to any circumstance tending to produce disaffection, by one sweeping declaration of my accuser, whereby he solemnly states to the General Court Martial, in the words I have read; "it is no matter of surprise, that those men, *naturally sa-* "*vage and barbarous*, should, *without any cause of com-* "*plaint, or provocation*, revolt against lawful authority." My accuser finds it necessary to travel a great way farther off, than to the Government House, or to the head quarters of my regiment, for any probable account or occasion of the mutiny. The contagion of rebellious example at Guadaloupe—the improper representation of ideas started in the British House of Commons, by enemies of the regiment at Dominica, and the seditious arts of designing wicked persons, in corrupting and seducing from their duty such of the men as were found to be the easiest materials to work upon, and the fittest instruments to work upon others: these are my accuser's views of the circumstances which led to the mutiny, given forth by him, when standing in the awful situation of a prosecutor, and a witness, in a trial for the life of a fellow creature, and which he solemnly affirmed to be "*the truth,* "*and nothing but the truth.*"

It would be an unpardonable trespass upon the time of the Court, to add to the accumulation of evidence, which the various testimonies and documents referred to afford in defence against this charge. Upon what I have last read, I shall only say, that the charge under discussion cannot possibly be true, unless, upon the supposition which I could not, without horror, entertain, that the present prosecutor, while commanding officer of my regiment, and when an evidence against one of my soldiers (a miserable helpless negro, unable to speak or understand the language in which he was accused) on a trial for his life, was himself guilty of wilful and deliberate falsehood.

In tenderness to my accuser, I would have forborne to call back to the recollection of the Court a distinction set up by Major Gordon, between the *reply* made by him on that memorable occasion, and another part of the statement made by him in a different part of the same trial, *confessedly upon oath.* He went so far as expressly to state to this Court, that his reply was to be considered merely in the light or a lawyer's pleading at the bar, and not to be considered as a statement, for the truth and accuracy of which he meant seriously to vouch. The impression which this distinction made upon your Lordship, and the other members of this Assembly, was such as became the character of a *Court of Honour.*

Major Gordon ought to have remembered, that in the trial alluded to, he appeared not as a lawyer at the bar, to employ the words put in his mouth by a client, but as the *party* himself, who brought the unhappy culprit to trial, and conducted the prosecution throughout, in his own person.

Under these circumstances, I believe that the sentiments which I feel upon this subject, are not different from what are felt by every man who now hears me.

The distinction I have mentioned is of such a colour, and of such a dye, that I believe the lowest practitioner in chicane that ever disgraced the honourable profession of the law, would have paused before he hazarded it. And I blush to think, that any thing of the kind should have proceeded from the mouth of a soldier.

But before attempting to split hairs in the manner attempted by Major Gordon, it should more especially have been remembered by him, that, as his own letter to me of 29th June, 1802, expressly states, the General Court Martial pronounced sentence of *death* against the prisoner upon the very evidence of his *reply*, which, in their judgment, rendered unnecessary any farther evidence which he proposed to adduce. The President of that Court was Lieutenant-Colonel John Farley, of the 58th regiment; and the senior member was Lieutenant-Colonel the Honourable E. Packenham, of the 64th. The other judges were no less respectable. Shall it be supposed then—is it possible to conceive, that these Ho-

nourable Judges could have done any thing so monstrous, as to sentence a human being to death, upon no better evidence than what Major Gordon offered, and they considered as merely a pleading at their bar?

Not to dwell upon a matter which can only excite indignation and disgust, I shall beg your Lordship's attention to the letters of Sir Thomas Trigge, which I read yesterday; from which it appears that, at the time of the mutiny in *April*, two companies of the regiment had been paid and settled with, no later than the *24th of October*; and two others, to the *24th November preceding*. Now, my Lord, what is the striking circumstance in the description of the mutineers? The ringleaders in the mischief, who were selected for trial by Major Gordon, amounted in number *to twenty-four*; and what conclusion must be drawn by every impartial mind, on being informed, that, of that great number of culprits, upwards of *three fourths* belonged to the *short-paid* companies!

This is a volume of evidence with regard to the real cause of the mutiny. It is stronger, and speaks to the heart and conviction of every man more forcibly, than a thousand testimonies. A witness may mistake. But this is proof arising out of the case itself, of which your Lordship will judge by the intuitive discernment of your own understanding.

I now humbly request, that the *fourth* charge may be read.

It was read by the Judge Advocate accordingly—and Colonel Johnston then addressed the President:

FOURTH CHARGE.

My Lord,

I am accused, finally, of having violated the *laws, rights* and *liberties* of the *subject*, by causing *James Ryrie*, a civil inhabitant of Dominica, in December, 1801, to be illegally arrested, and confined in a guard-house, and for having *suffered* him to be insulted and maltreated by persons under my influence and command;—and I am farther accused of having, in July, 1802, *authorised* or *permitted* my servant to insult and threaten Mr *Etienne La Caze*, residing in Dominica, formerly a Lieutenant in the Loyal Dominica regiment, to drag him to Fort Younge, and confine him there, with an armed centinel placed over him.

With respect to the latter branch of this charge respecting *La Caze*, I could not help being a good deal struck with the mark which that charge exhibits, of the prosecutor's attention to my conduct.

He quitted Dominica, with my regiment, *in April*, 1802. The case of La Caze, by his own statement, did not exist till *three months thereafter*, during which period Major Gordon's *constant residence* was at Barbadoes; and he never afterwards returned to Dominica. If his love of justice dictated this charge, the sentiment has been very slow in ripening into action. If he is actuated by a less commendable passion, it must be allowed to be one of those, that does not very quickly cool or subside.

This is the only article of accusation, of which Major

Gordon had not access to know by the information of his eyes and ears, at the time that every fact charged happened. In this instance, Major Gordon derived his information from report, sounded from Dominica to Barbadoes; or, for aught I know, from Dominica to Great Britain, through that trumpet, which, howsoever loud, is, of all channels of communication, the least famed for authenticity, and the most dangerous for a man *upon oath* to resort to, as his authority.

On a view of the whole of this charge, in its several parts, I must observe, that though it was my earnest desire, and my humble request to His Royal Highness the Commander in Chief, that every circumstance which my accuser could allege against me, should be brought forward, in order to give me an opportunity of vindicating my conduct, in all points where it was attacked, yet I might seem wanting to that respect which I owe to this Court, and to the regularity and dignity of its proceedings, if I omitted to take notice of the irrelevancy, as well as of the incompetency of the facts stated under this charge, as cognizable by a Court Martial.

The military law, which has for its object the better government of His Majesty's forces, and the discipline of the army, on which the national security depends, is enacted by the same authority, and rests upon the same foundation with the common and statute laws, which bind the whole subjects of the realm. At the same time, it neither supersedes nor interferes with the civil law. Its peculiar province is clearly and accurately defined, and the particular cases, falling under the jurisdiction of the Military Courts, are distinctly specified by acts of Parliament, and by the Articles of War, and regulations for the army occasionally issued by His Majesty, under the authority of Parliament.

The cases or offences, so specified, cannot be otherwise disposed of or punished, than is specially provided for by that authority: neither is it in the power of the Civil Courts to assume the cognizance of any of those offences properly military, and subject to trial before a Military Court.

In like manner, for manifestly wise and salutary purposes, and in order that perfect harmony may be preserved between the civil and military powers of the State, it is established, that a person accused of a *civil* offence, falling under the cognizance of the ordinary Municipal Courts, is not subject to military law, or to trial by a military tribunal.

It makes no difference whether the offender is in a military or in a civil station. If the fact charged be a civil offence, it can only be tried in a Civil Court. The Mutiny Act of 1804, section 13, expressly provides, "That "nothing in this act contained, shall extend or be con- "strued to exempt any officer or soldier whatsoever, "from being proceeded against by the ordinary course "of law." Thus, on one hand, soldiers, in common with all other classes of their fellow subjects, are bound to the same dutiful observance of the laws of the land, and are amenable to the ordinary civil and criminal courts of justice, for all offences against those laws; and, on the other hand, no soldier, or individual of any class of citizens, who is charged with an offence, for which the common or statute laws of the country have provided a punishment, is subject to be tried before a Court-Martial; neither can the military power interfere, to prevent the punishment of any soldier guilty of such offence, or supersede, by any judicial procedure before a Court Martial, the ordinary effect of the laws of the country. The *exception* of the case, where martial law is proclaimed, when the Legislature, impelled by state necessity, arms the military Courts with extraordinary and temporary powers, confirms the *general rule.*

Having thought it my duty to state these general observations, I have now humbly to submit to your Lordship and the Court, that the offences described under this charge, are strictly of a *civil* nature. I am said to have violated the laws and liberty of the subject, by confining in a guard-house, and otherwise maltreating, two *civil* inhabitants of Dominica; a proceeding the more unworthy on my part, that these gentlemen are not said to have *done any thing* deserving of such usage. But, taking the facts as stated in the charge, the amount comes to this;

that I, as commanding officer, (I suppose my accuser meant to say, as *governor of the island)* committed two several acts of *false imprisonment*.

Now, I shall readily admit, that, if an offence of that description were brought home to me by credible evidence in a *court of law*, and *at the suit of the parties* injured, in a civil action for damages; or, at *the instance of the Attorney General*, in a criminal action for punishment, I should be subject, in the one case, to make *reparation* to the *private party*, and, in the other, to incur such penalty, as a jury of my country should consider to be adequate to the degree of my guilt, or of the injury done.

But these are not *military offences*, nor triable in a *Military Court*; neither are Messrs. Ryrie and La Caze, the supposed *offended parties*, the prosecutors on the present occasion; nor is Major Gordon, as far as I know, entitled to invest himself with the office and powers of His Majesty's Attorney General. *If he is*, what apology can be made for his silence, from the *4th December*, 1801, the date of the supposed outrage on Ryrie, till the *24th April following*, the date of his departure from Dominica; and for his then leaving me at large, and quietly in the island, loaded with all his professsions of friendship and esteem for me, which your Lordship has heard?

But I should be ashamed to press a matter which, in my humble apprehension, admits not of argument, to the consideration of the Court.

The facts stated under this charge, if complained of by the parties, and in the form competent, at the time when, and in the place where, they happened; and if they constituted relevant grounds for prosecuting me in a court of law at all, the ordinary courts of justice at Dominica alone, were the tribunals before which they could be tried. No *military* court would have been competent to entertain a prosecution for them *there*; and still less, can they be subject to the irregular and unheard of mode of trial now proposed by my accuser, before a General Court Martial in this country.

I shall leave with the Court this matter, which, how important soever in point of precedent, I should be glad to wave, as far as regards my individual right and interest,

after stating the provision made by the 4th Article of the 24th Section of the Articles of War, which ascertains the point in question, and appears to render the objection to the competency of this charge unanswerable.

By the 11th Section of those Articles, entitled, "Of "Crimes *punishable by Law*;" a title which itself illustrates the subject now considered—the officers of every regiment, troop, company, or detachment to which any person accused of any crime of that description belongs, are required, "*upon application duly made* by, or in be- "half of the party or parties injured, to use his and their "utmost endeavours to deliver over such accused person "or persons to the said magistrate." The 4th Article of the 24th Section (before mentioned), after repeating the Clause of the 11th Section just now read, proceeds; "Yet, in our garrison of *Gibraltar*, or in any other place "beyond seas, where our forces now are, or may be em- "ployed, *and where there is no form of our civil judicature* "*in force*, the general, governor, or other officer com- "manding in chief for the time being, is to appoint Ge- "neral Courts Martial, as occasion may require, for the "trial of any such persons under his command, accused "of wilful murder, theft, robbery, rape, coining, or clip- "ping the coin of Great Britain, or any foreign coin "current in the garrison, or place under his command, "or *of having used violence, or committed any offence against* "*the persons or property of any of our subjects, or of any* "*others entitled to our protection*; and the persons so ac- "cused, if found guilty, shall suffer death, or such other "punishment, according to the nature and degree of their "respective offences, as by the sentence of any such Ge- "neral Court Martial shall be awarded."

I need scarcely mention, that in the above general enumeration of offences, the very description of the facts here charged is given as one instance of crimes, *punishable by the known laws of the land*, which are *therefore* held *not to be* subject to the cognizance of any military court, and which are, under the express authority of the Articles of War, sanctioned by Parliament, *permitted* to be tried by Courts Martial at *Gibraltar*, as a case of *singular exception*,

and necessity, there being no form of His Majesty's civil judicature in force in that garrison.

But, no such exception does, or could take place with respect to offences of the same description in *Dominica*, where there are established civil and criminal courts of common law; judges; an attorney, and solicitor general; with the other accustomed officers of justice. And still less can such an exception be tolerated on the present occasion (I still speak on the supposition that the facts, as charged, were of a nature triable before any court of law whatever), *within the jurisdiction of His Majesty's Courts of Great Britain.*

The military duty, your Lordship perceives, in the instances specified, is not to *try* the accused person, but, *on the contrary*, to deliver him over to the civil magistrate; and even this duty is not to be *volunteered* by the military officer, but is lawful only *upon application duly made by* or *in behalf of the party* or *parties injured.* And, what is it the Court Martial is to try? Not the *common-law offence* giving rise to such application; but the *military offence* of the officer applied to, in refusing to comply with the application made by the injured party. It is not even pretended, however, that any such application was ever made in the case stated under this charge.

I have to add only one observation more; and, in my humble apprehension, it is conclusive. Although the sentences of Courts Martial affect a man directly in his military capacity, and those of Civil Courts in his civil capacity, yet it accords with common sense and feeling, that a man who is guilty of a high civil offence, forfeits all title to exercise an honourable profession. It must come home forcibly to the breast of every man, that the violator of the laws of his country, is unworthy of being ranked in the society of those who are prepared to shed their blood in its defence. Hence the legislature, from a salutary regard to the purity of the military character, has empowered Courts Martial to proceed against soldiers who have been convicted of offences before the civil magistrate, for the purpose of dismissing them from His Majesty's service. But, the decisive consideration is, that Courts Martial can so proceed only *after conviction*

in the Civil Court; and that they have no competent authority to enquire into *the evidence* or *the grounds* of that conviction. Their powers are confined to the proof of *the conviction having actually taken place*; and this is a sufficient ground for them to proceed, agreeably to law, to inflict the military punishment of *cashiering* the offender.

The charge under consideration, obviously reverses the order prescribed by the Mutiny Act, and the Articles of War. It supposes that the Military Court is to try the civil offence in the *first* instance, and may inflict upon a person who is not tried, and who, if tried, may be found innocent by the Civil Court, the punishment that can only be awarded by the Military Court, *in consequence* of proof brought before them, of the culprit's trial and conviction in the Civil Court.

I ought to make an apology to your Lordship and the Court, for having dwelt, perhaps unnecessarily long, upon a point, of your decision upon which, though agreeable to what I have humbly stated, I have declared my sincere wish in no degree to avail myself.

But considering it, as I do, to be a novel case, and one which, by the determination of it, may lead to momentous consequences, involving the fate of every officer in the army; I humbly thought it my duty to lay before the Court a full state of the observations, which, upon examining those authorities which Parliament and His Majesty's regulations hold forth, for the government of Courts Martial, have produced conviction upon my own mind.

HAVING acquitted myself of this part of my duty to the Court, I shall now solicit your patience, while I endeavour, as shortly as possible, to discharge the duty I owe to myself, by relating the facts on which this charge is founded.

THE intelligence of the PRELIMINARIES of PEACE reached Dominica in November, 1801, and I availed myself thereof, in taking an early subsequent opportunity to assemble the St George's Militia, on their usual parade;

when I thanked them for their attention, and acquainted them, that as there was no further occasion for their attendance, they might return their arms into the ordnance store. The commanding officer of the 68th regiment, then in the island, inspected his corps on the parade at the same time. The Militia corps behaved properly, and returned their arms as desired. But there was a private of that corps, of the name of *James Ryrie*, a carpenter, who had received my permission to be absent that day from the parade, in order to superintend the construction of a barrack at Morne Bruce, where the 68th regiment was quartered. This man, instead of attending that work, or appearing in his place in the corps, came on the parade, and went about insulting the militia soldiers, calling them a parcel of cowards, to lay down their arms to a body of *United Irishmen;* alluding to the 68th, which was an Irish regiment.

Not content with throwing out that abuse on the parade, Ryrie repeated it, with circumstances of aggravation, to Mr Salton, one of the Judges of the island. Mr Salton represented to him the impropriety of his conduct, particularly in addressing such language to him, which he should be under the necessity of reporting to the Governor.

In the mean time, the officers of the 68th regiment, being apprized of Ryrie's misbehaviour, held a meeting for the purpose of considering how they ought to proceed against him.

About the same time, and I believe upon the 14th December, 1801, Mr Salton was going to embark in a vessel for Martinique, when Ryrie met him on the shore, and without the least provocation, as I was informed, accosted him with very abusive language, and knocked him down. I was then walking near Fort Younge, attended by Mr Kerr, and my Aid-du-Camp, Major Lucas, when two gentlemen of the island, Messrs. Quin and Collins, came running to me, and related the outrage which they had seen; adding, that Ryrie was just going on board a schooner, to sail for St Martin's, and would escape from justice, unless I detained him. My answer was, "What "shall I do?" to which Mr Quin replied, "You can ap-

" prehend and detain him till a warrant is got." Accordingly, I directed my Aid-du-Camp to go for Ryrie, and to put him into the officers' room, in Fort Younge. This fort, I may observe, is a colonial fort, for the protection of the revenue, and is under the orders of the Governor of the island.

I then went immediately to Messrs. Fraser and Pagan, the two other Judges of the island, who advised me to liberate Ryrie, which was instantly done, and he came out after having remained in the *officers' room for something less than half an hour.* I understood that the chief ground of the opinion given by Messrs. Fraser and Pagan, was, that, as Mr Salton, after recovering from the blow, had gone on board a vessel, then under way for Martinique, and was not present to swear to the outrage; the commitment, on that account, could not regularly take place. Of this circumstance I was ignorant at the time of apprehending Ryrie; and I am conscious of having acted from no other motive whatever, than to assist in effecting a just purpose.

With regard to *La Caze,* the Court will be informed, that this man was a *French emigrant* from Guadaloupe, to whom, in the year 1797, I, as Governor, gave a commission in the Loyal Colonial Negro regiment, of which I was the Colonel. He continued in that corps till its reduction in 1798. He afterwards became addicted to such incorrigible habits of dram-drinking, that I found it impossible any longer to countenance or protect him. I permitted him, however, to remain in the island, and he lived in a great measure on charity. Prior to July, 1802, many complaints had been preferred to me by the most respectable inhabitants of the island, of the intemperance and violence of that poor man; particularly of his having, at various times, threatened to murder them; and these threats were the more serious, that he usually went about with a drawn sword, knives, and pistols. The complaints received were universally accompanied with requests, that I would order La Caze to quit Dominica.

In consequence of these applications, I sent for the man, informed him of the complaints made to me, and assured him that, unless he behaved peaceably in fut ure

he must leave the island.—Upon his promise of future good behaviour, I allowed him to remain; but in a very short time afterwards, Monsieur Danglemont, a respec table French emigrant, with Mr Quin, and some others, called upon me, and stated that La Caze had been guilty of a violent assault upon Monsieur Danglemont, to the danger of his life; and entreated me to order him off the island. Upon this, it appeared to me, that I had no choice left, and I sent orders to La Caze to depart from the colony within eight days.

It was nearly a fortnight after this, that I was returning one day from my country house, with Major Lucas, now attending this Court as a witness, when I met La Caze on the public road, and I expressed to him my surprise that he had not complied with my order to depart from Dominica. He did not attempt to say any thing in his vindication; and I told him, there was a necessity for his going along with me to Roseau, and finding security to leave the island.

Accordingly, we rode along together to Roseau; but, on arriving there, La Caze alighted from his horse, and attempted to run away. On this, my orderly secured him, and he was conducted to the officers' room in Fort Younge, where I sent him his supper by my own butler, and every attention was paid to his being lodged comfortably.

Next morning, on his finding security to quit the colony in a few days, he was liberated; and I heard no more of him, until a gentleman from Guadaloupe informed me of his having returned to that island, where he committed such acts of extravagance and madness. as to make it necessary for his wife and family, resident there, to throw themselves on the protection of the Governor of that colony; by whose interposition, the unfortunate man was separated from his family, and prohibited to enter on his estate.

Such is the true account of my conduct respecting this person, La Caze; which was dictated, not merely by regard to propriety and good order, but by absolute necessity. And I have every reason to believe, that there was not a man in the island at the time, who did not, in his heart, approve of, and thank me for what I had done.

My Lord,

I shall now call for the production of some papers, and examine a few witnesses, less with a view to contradict, than to confirm and elucidate the evidence already adduced by the prosecutor.

PROOF.

FIRST CHARGE.—Colonel JOHNSTONE rested his defence upon the evidence adduced by the prosecutor, without thinking it necessary to add to it, farther than by calling the tradesman who furnished the scarlet cloth, to prove the purchase, and his bill for the price, by reading a letter from Lieut. Col. Wilson, bearing, that he carried out the cloth to the West Indies, and there gave it in charge to the Quarter-master of the regiment, to be issued to the officers; and ascertaining, by the testimony of Capt. Allan Cameron, one of these officers, the date of the issues, and of the Paymaster's receipts for the value of quantities of the cloth in November, 1801.

SECOND CHARGE.—Colonel JOHNSTONE also rested his defence, as to the *first* part, entirely upon the testimonies delivered by the prosecutor's witnesses, and upon the authenticated documents produced by them in support thereof.

With regard to the *second* part of that charge, Colonel Johnstone admitted, and *founded upon* his letter to Major Gordon, of 17th April, 1802, as itself affording a complete *defence* against the accusation attempted to be raised upon it.

As to the other article of accusation, the *prosecutor's* own deposition (the *only* one given *in support* of this part of the *prosecution*) stated Colonel Johnstone to arrive in a boat at Prince Rupert's (which is situated at the distance of *five miles* from the south side of *Point Round*, otherwise called *Morne Round*) on the 11th of April, 1802, carrying a bag that contained one hundred doubloons; and, on landing from the boat with his bag, and taking Major Gordon by the hand, he, the Colonel, then, and there,

asserted to Major Gordon, a falsehood unbecoming his rank, and the character of an officer *.

In opposition to this testimony of the prosecutor in his own behalf, Colonel Johnstone called Adjutant Nash, of the 26th foot, who first of all produced the following letter, addressed to him by Major Gordon, dated 19th October, 1804, with a copy of his answer to it, dated the 27th of that month:

12, *New Peter-street, Westminster, 19th October.*

Sir,

I was sorry I had not the pleasure of seeing you when you was in London last year; you could have given me information on several points relative to your department, and recollected many circumstances and transactions in Dominica, during our residence in that island, which might have been of importance in the business which has taken place between Colonel Johnstone and myself. I believe you was likely to be a sufferer by him, as well as many others. Major Lewis Grant (now Lieutenant Colonel) told me that the Governor had got hold of five hundred pounds of your money, and given you a bill for it, of which you was not likely to recover payment, as those on whom it was drawn had declined accepting or paying any bills on his account. This was, in fact, a common practice with Governor Johnstone in Dominica, to obtain money or other property from every person who would give him credit, and give them bills for the same on persons in England, who did not owe him a farthing; knowing well, that if the bills were returned protested, which was often the case, he could not be distressed, nor forced to pay the money, nor be deprived of the property, whilst he continued in his government. Since he has returned to England, he has been very often arrested for debts of this nature. I hope you have been more lucky than to be put to so much trouble to recover your money. I understood that you had Mr Kerr, the Paymaster of your late corps, bound for it: if that was the case, you have probably got paid, otherwise your chance is not very great. You will oblige me by inform-

* See Note, p. 71.

ing me, at what time he got possession of your money—under what pretence—on whom he gave you the bills—if you have been paid—when, and by whom. My reason for being thus particular is, that the transaction will probably throw light upon some other money matters of his in which I am interested. I hope, therefore, you will excuse my requesting to be favoured with an answer, with as little delay as possible. You will further oblige me by mentioning if you recollect a short period at Dominica, that there was no *pease* or *rice* in the Commissary's store, and what articles you issued to the men in *lieu of them*. Your early answer will oblige

Your very obedient servant,

MAJOR JOHN GORDON,
Late 8th West-India Regiment.

Copy answer, admitted by Major Gordon, produced and read:

Athlone, 27th October, 1804.

Sir,

I received your's of date 19th instant: in answer to which, have to inform you, that I have no claim upon Colonel Johnstone; he always acted very honourably towards me, and much to my satisfaction. As to the different articles of provisions you mention, I have to say, that the second battalion 68th regiment got their proper proportion of every species allowed by Government; nor do I recollect the want of either pease or rice. The second battalion 68th regiment left the island of Dominica without having the smallest complaint, otherwise it must have appeared at their reduction.

I am, Sir,

Your obedient servant,

JAMES NASH,
Adjutant 26th Regiment.

Major Gordon, late 8th West-India regiment.

Colonel JOHNSTONE now asked the witness:

Did you accompany Major Scott, Lieutenant Colonel Grant, and Colonel Johnstone, with the detachment on board the French schooner, on the 11th April, 1802?

I did.

Where did we land with the detachment?
Either at *Point Round,* or Morne Round.

Captain AUGUSTUS GRAVELEY, of the merchant service, being sworn, was examined by Colonel Johnstone:

Did you see Colonel Johnstone at anchor on board a schooner, on the 11th April, 1802, with a detachment of the 68th regiment at Point Round?

I did.

Did Colonel Johnstone land with the detachment at that place?

Yes; I was the person that landed him and other officers: It was in the forenoon, about ten or eleven o'clock, opposite to a large white house *southward of Point Round.*

Examined by Major Gordon:

Was it in your schooner that Colonel Johnstone came from Roseau?

It was not.

Did you land any baggage with Colonel Johnstone?

No; I carried his baggage round to Prince Rupert's, and landed it opposite the tavern tree. I did not land the baggage that night, in consequence of being obliged to beat up. I landed it the next morning, the 12th. I was not on shore on the 11th at Prince Rupert's.

Were there any other vessels in company with you?

Yes; two sloops, and a French schooner which the Colonel came in. Colonel Johnstone's baggage was on board the French schooner. I took it out, and landed it at Prince Rupert's the next morning. Colonel Johnstone was not on board my schooner at all.

Lieutenant-Colonel LEWIS GRANT, 70th regiment, being sworn, was examined by Colonel Johnstone.

Did you accompany Major Scott and Colonel Johnstone, with a detachment of the 68th, towards Prince Rupert's, on the 11th of April, 1802?

I went with him, for the suppression of the mutiny; I don't recollect the exact day.

Did we land at Point Round?

Yes, we landed at Point Round.

Question by Major Gordon.

Do you recollect Colonel Johnstone meeting Major Gordon, on the day you landed?

I do not.

Major ALEXANDER MARK KERR HAMILTON, of the 68th regiment (now Lieutenant-Colonel of the 5th West India regiment,) being sworn, was examined by Colonel Johnstone.

Did you embark on board a schooner, with a detachment of the 68th, for the suppression of the mutiny at Prince Rupert's, on the 10th or 11th of April, 1802?

I did, on the morning of the 10th

Where did you land with your detachment?

At Point Round.

Did you see Colonel Johnstone on the 11th of April entering the town of Portsmouth?

I saw him enter the town coming *from Point Round*, at *a gallop*. I recollect Colonel Johnstone mentioning to me, he was come from Point Round, where the greater part of the 68th regiment had landed, under the command of Major Scott; and that he found much difficulty in crossing some of the rivers, which were a good deal swelled by the rain; he then ordered me to join my own detachment, and march into the town.

Did you understand that Colonel Johnstone had seen Major Gordon before he saw you?

I am very certain he saw me before he saw Major Gordon.

Cross examined by Major Gordon.

Was not your detachment stationed at the end of the village nearest Point Round?

My detachment was at a considerable distance from the town, but towards Point Round.

Lieutenant THOMAS O'NEIL, Royal Marines, being sworn, was examined by Colonel Johnstone.

Did you see Colonel Johnstone enter the town at Prince Rupert's, on the 11th of April, 1802?

I saw him, previous to his entering the tavern, coming

into the town, at some distance, *on horseback, from towards Roseau.* Major Hamilton was, I believe, the *first* person who spoke to him.

Where did you understand Major Gordon was at the time?

I am confident *he was sitting in a back room at a tavern.*

Cross examined by Major Gordon.

Where was the witness when Major Hamilton and Colonel Johnstone met, and the conversation passed?

I was walking about with my men opposite the tavern.

THIRD CHARGE.—To prove the *first* part of this charge, which accuses the prisoner of having worked a detachment of recruits of his regiment upon his own lands, Major Gordon swore, that, some time in *July*, 1801, he saw a number of black men, to the number of 80, drawn up behind the Government House at Roseau, for the purpose, as he understood, of shewing them to him and Lieutenant-Colonel Wilson, as recruits; that "he particularly looked "at the men, and either the next day, or within a few "days, when at Roseau, he saw a considerable number of "men, whom, from every appearance, he *conceived* to be "the same men he had before seen mustered as re-"cruits, working among the canes in a piece of ground "behind Government House."

Being asked by the prisoner, on the cross-examination, "how high were the canes from the ground, in which "you saw the men working in July, 1801, at Government "House?" He answered:

"I cannot speak positively to their height; they ap-"peared to me to be in the first year's growth; I suppose "they might be *about two feet*, and not sufficient to *hide a* "*man.*"

Major Gordon, after closing his own testimony, called Sir THOMAS TRIGG, who deposed, that he *knew nothing* of the first part of the 3d charge.

Colonel Johnstone, however, put this question: "Is it "consistent with your knowledge, that, while you was "Commander in Chief in the West Indies, both white and

" black regiments were employed in duties of fatigue ne-
" cessary for the public service, particularly in St Vin-
" cent's, Granada, and Trinidad, by the respective com-
" manding officers of these islands, without receiving any
" thing farther than an extra allowance of rum?"—To which Sir Thomas answered—" *I believe they might be so* " *employed,* but I have no recollection respecting it."

Was the information which you communicated to *the Commander in Chief,* relative to my conduct, taken from depositions upon oath?—Sir Thomas answered—" It was " not."

" Was Colonel Johnstone *a party to any of the examina-* " *tions* respecting the causes of the mutiny?"—Sir Thomas answered—" He was *not.*"

MAJOR GORDON next proposed examining Lieutenant General William Keppell, and Major Darling, two of the members of the Court of Inquiry, held, in Colonel Johnstone's absence, and without his knowledge, at Martinique, subsequent to the mutiny, with regard to what the persons examined on that occasion, not upon oath, declared before that court. Upon this Colonel Johnstone addressed the President as follows;

MY LORD,

I am extremely sorry to state an objection to any part of the proceedings of the Court, but I am confident, you will be of opinion, that I have just reason for what I am now humbly to offer.

It is now proposed by the Prosecutor, to examine Lieutenant General Keppell, with regard to the *Declarations* made by the different persons, who were examined in his presence, before the *Court of Inquiry* held at Martinique, soon after the mutiny.

Now, my Lord, what I have to say, is this; that whatever account may be given by General Keppell, or by any other person, of those declarations, cannot be received as evidence against me; and if such is the case, then I believe, your Lordship, and the other members of this Honourable Court, will agree with me, that any such ac-

count ought not to be entered in the Record of your proceedings.

Whatever passed at that Court of Inquiry, was *in my absence*, and *without my knowledge*; and there is no maxim more strongly founded in justice, or better established in law, than that the proceedings of any Court, howsoever regular in themselves, cannot affect a person who was *no party* to them. I will put as strong a case as I can figure.

I will suppose, that a decree of the Court of King's Bench of England, obtained in the most regular and formal manner, and proceeding upon the most clear and unexceptionable evidence, *to which I was not a party*, were affirmed by the present prosecutor, to contain matter tending to implicate me in the guilt of the mutiny of my regiment. Your Lordship and the Court could pay no regard to it, nor permit the decree of that high Court, to be laid upon your table. The reason is manifest; because, by not being present at the proceedings, I had it not in my power to defend myself, by cross-questioning the witnesses who were examined, or by refuting their testimonies, by the production of written or parole evidence in my own behalf.

But, my Lord, the case goes still farther—The witnesses in the Court of Inquiry were not examined *upon oath;* and to this I must request your attention. Let me suppose, that these witnesses were now to come in person before you; you could not permit one of them to open his mouth in evidence, till he was duly sworn. The Judge-Advocate could not record one syllable of any declaration not made upon oath.

Now, my Lord, what is the case here? Even these inadmissible declarations are not asked to be produced, but General Keppell is to be asked to give *an account of these very inadmissible declarations.*

This, most assuredly, is making bad worse. I beg pardon, my Lord, if I express myself too strongly: But, as the case strikes my mind, the prosecutor's object, if carried into execution, would be little less than a mockery of judicial procedure.

I am aware, my Lord, that the great end of your sitting here, is to get at the truth; and God knows, that the

first wish of my heart is to facilitate and to ensure your attainment of that end: that, more especially, I have no desire to with-hold from your view the proceedings in question, you will require no better proof than this, that, previous to the commencement of my trial, I applied to the Judge-Advocate General, to summon their production before this Court.

But regularity, which is inseparable from the proper conduct of all business, is, in judicial business, essential to the purposes of justice. The admission of the evidence, now tendered, would be in the highest degree irregular, for the reasons stated; and most unjust, not only to me, but, from the precedent it would establish, to every officer of the British army, who may hereafter stand in a situation similar to mine.

Having submitted thus much to the consideration of the Court, I beg leave to explain, in what way alone the proceedings in question may regularly and justly be used or resorted to, in the present trial.

The *prosecutor* can make no use of them whatsoever, for the reasons I have humbly laid before you: But *I* can avail myself of them, with the strictest propriety, and with effect.

The prosecutor confessedly was a *witness* examined on that occasion, and his declaration is recorded in the proceedings: He is also a witness in the present trial. Now I have an indisputable right to call for the production of any written declaration, and also to prove every verbal declaration, made by my accuser, on any former occasion, in order to compare the same with the present charges, and with his testimonies in support of them, to the effect of impeaching, or totally destroying his credibility. It is material to observe, that I cannot, for this purpose, refer to the declaration of *any other* person; and were I to offer the declarations of the other witnesses examined in the Court of Inquiry, the prosecutor would have the same right that I have to object to the admission of that evidence. This illustrates the principle of what I have stated, and demonstrates the equity of the maxim founded upon it. I can ask no more, than to compare my accuser with himself; and to place the declarations, or the oaths com-

ing from the same mouth, upon the same subject, at different times, in contrast with each other.

In like manner, had I been a witness on the occasion alluded to, my accuser would have had a right, if he could, to condemn me by my own mouth. And all I humbly contend for, is, that neither of us is entitled to criminate the other, by declarations of *third parties*, taken in the absence, and without the knowledge of either, and not upon oath.

On these grounds, my Lord, I conceive myself warranted to ask the sense of the Court upon the *competency* of the evidence now proposed to be introduced; and, in the event of your judgment being contrary to my own, that this Minute may be recorded by the Judge-Advocate, in your proceedings.

A. COCHRANE JOHNSTONE.

The COURT, after having been cleared for deliberation upon this minute, allowed Lieutenant-General KEPPEL to be called in, when the following question, respecting the first part of the third charge, was put to him by the COURT:

" Does the witness know, that the men of the 8th " West India regiment were ordered, and employed in " manual labour upon Colonel Johnstone's *own* lands?' Answer, " *I do not.*"

Major DARLING was next called in and interrogated by the Court, respecting the said article of charge.

" Does the witness know, that the men of the 8th " West India regiment, were ordered and employed in " manual labour upon Colonel Johnstone's *own* lands?" Answer, " *No.*"

The prosecutor's next witness, Lieutenant GREENSHIELDS (late of the 8th West India regiment), was asked by the Court;

" Do you know, when acting as Adjutant, or at any " other time, that any men of the 8th West India regiment " were employed in manual labour, or otherwise, on *Co-* " *lonel Johnstone's Estates* or *lands?*" Answer, " *No.*"

The prosecutor then called Captain Ince, who swore; "I have seen negroes, who I *considered* to be recruits for "the 8th West India regiment, working on a piece of "ground *attached to Government House* at Roseau, some "time in 1801; but I cannot specify the exact period.— "They had been employed by the Quarter-master gene- "ral's department, in carrying lumber for the barracks.— "In the former instance they were hoeing the ground for "the cultivation of sugar, which I afterwards saw on the "ground, *but I do not know whether it was private or pub- "lic property*.—The piece of ground was immediately in "the rear of the House."

Colonel Johnstone asked this witness,

"Is it consistent with your knowledge, that these men "were employed for some time *in picking out stones from "the ground*, for supplying the masons building the wall "round the *Government House*?"

Answer,—"I do not recollect that kind of work;— "*it appeared to me* they were hoeing—*I have seen them em- "ployed on the wall*."

Such was the evidence, *negative* throughout, adduced by Major Gordon in support of this article of charge, by which it is *impossible* that he could ever have seriously *expected* to be able to establish any part of it. And howsoever unnecessary it was for Colonel Johnstone to examine a single witness in his defence against it; yet, in order to give the Court a full and clear view of the facts, as they truly happened, he begged to call in Captain ARCHIBALD STODDART, 1st Regiment Royals, formerly Lieutenant in the 8th West India regiment; to whom, after being duly sworn, he put this question:

Had you charge of the detachment of recruits of the 8th West India regiment quartered in Dominica, previous to the arrival of the regiment in 1801?

Yes, I had.

Did you ever see or hear of that detachment being employed by Colonel Johnstone's order, either in hoeing or planting canes, in a piece of ground behind the Government House at Dominique?

No—never.

When did the detachment embark from Roseau to go to Prince Rupert's?

To the best of my knowledge, about the end of July, or in the beginning of August.

How long would they be going from Roseau to Prince Rupert's?

A few hours.

At what time did the regiment arrive at Prince Rupert's from Antigua?

About the beginning of July.

Examined by Colonel Johnstone.

While you had the command of that detachment, were there any non-commissioned officers belonging to the regiment in the island during the time, and was you in bad health during the greater part of the time?

There was a Mulatto non-commissioned officer, who came from the 87th regiment. I was taken ill the beginning of August.

JOHN CUMMINGS, late Captain in the 8th West India Regiment, being sworn, was examined by Colonel Johnstone.

Were you a Captain in the 8th West India regiment in the year 1801?

I was.

When did the detachment of recruits stationed at Roseau join the regiment at Prince Rupert's?

They joined before I did; I joined on the 26th or 27th July 1801, and the recruits were there when I joined.

CHARLES WILLIAMSON, Esq. being sworn, was examined by Colonel Johnstone.

Were you Garrison Surgeon at the island of Dominique, during Colonel Johnstone's government?

I was.

State to the Court what was Colonel Johnstone's general conduct with respect to the health and comfort of the troops?

Colonel Johnstone was upon all occasions extremely anxious for the general health of the troops, and to comply with every requisition I made for their assistance.

Was there a considerable sickness in the 68th regiment in the year 1801? and to what do you ascribe the preservation of the lives of the remainder of the regiment?

There was a severe contagious fever, attended with great mortality. It was so severe, that the men seemed to be seized with a panic, and there was every probability of its going through the regiment: the only chance of preventing it appeared to be, the removing of the men from the situation they were in. In consequence of which, Colonel Johnstone immediately gave orders for providing vessels to embark those men that were in health, to carry them round to windward of the island, where they were placed upon the estates of different planters, Colonel Johnstone's, and some others: after which there were very few deaths, and the disease entirely ceased.

Did I at the time give up the Government House to the officers, who were sick of the yellow fever?

Yes; several officers of the 68th regiment were accommodated there, and they all recovered.

GEORGE PRINGLE being sworn, was examined by Colonel Johnstone.

In what capacity are you?

Butler to Colonel Johnstone, and have lived with him nine or ten years.

Did Colonel Johnstone, in the months of July or August, 1801, bring down to Government House, Roseau, from his estate at Stewart Hall, any, and what number of negroes, and for what purpose?

In the beginning of July, 1801, I heard Governor Johnstone give an order to Mr. Carreau, manager of Stewart Hall, to bring down a sugar gang, in order to hoe part of the ground attached to Government House, to plant canes in. In consequence of that order, Mr. Carreau brought down forty-three negroes the following morning, and they commenced working on that ground, and continued for three or four days.

Did you purchase provisions for those men, as my butler?

I did.

Question by the COURT:
Were, or were not, other negroes employed upon the same work at the same time?
None, I remember.

Question by the COURT:
What was the detachment of recruits employed in at that time?
I do not know; but they were never allowed to come into the Government ground whilst Colonel Johnstone's own negroes were there. I have seen them employed at times between January and July, in collecting stones for the masons in the Government grounds, and in carrying wood for the construction of the barrack, and I do not recollect seeing them in any other work.

Question by Major GORDON:
Was the detachment of recruits at Roseau, when Colonel Wilson went to Antigua?
I cannot exactly recollect. The detachment left Roseau at the end of July, or the 1st or 2d of August.

Colonel JOHNSTONE further proposed to prove, by the depositions of Dr. Williamson, Charles Kerr, Esq. and Gilbert Salton, Esq. that the whole of the lands alluded to in the charge (the property of Government) were hoed and planted with canes entirely by the Colonel's own negroes, brought for that purpose from his estate, at several miles distance. He first called Doctor Williamson, whose opportunities of knowledge were the best imaginable, he having attended, and given medical assistance to these negroes during the period of their employment.—But here, an honourable member, addressing Colonel Johnstone, observed, "That any farther evidence was unnecessary, "as every member of the Court was convinced, that he "had not worked the men of his regiment on any of his "grounds, but had employed his own negroes alone." In consequence of this communication of the unanimous sense of the Court, Colonel Johnstone respectfully declined examining his other witnesses, to establish the de-

fence thus already demonstrated to the conviction of his Judges.

WITH respect to the *last* part of the third charge, Sir Thomas Trigge, on the part of the prosecutor, after some observations applicable solely to the great work, since executed at a vast expence by General Prevost, of *draining* the swamp, but inapplicable to the cutting of the brush-wood for the mere purpose of admitting the sun to dispel the damps and vapours rising from it, so fatal to the lives of the garrison, deposed, that Colonel Johnstone "was "authorised to order the soldiers to be employed in clear-"ing the ground about their barracks or encampments, "or in any thing relative to their own cleanliness and "convenience."

Interrogated by the COURT.

Do you conceive that cutting the brush-wood in the swamp, or clearing the swamp, was a considerable duty?

Sir Thomas answered, shewing his total misapprehension of the nature of the work alluded to in the question: I always "looked upon clearing the brush-wood *as a com-*"*mencement of clearing the swamp*, and *therefore* a consi-"derable duty in the opinion of the soldiers."

Sir Thomas allowed, that he had no knowledge of any circumstance relative to the charge, except from mere report; that he had no recollection of any representation having ever been made to him, even by the prosecutor, that the 8th West-India regiment had been employed for a considerable period in *digging* and *draining* the swamp, and in widening the mouths of the drains. And, in answer to the following question: "Did you understand "they had been so employed?

Sir Thomas answered, "I understood generally that "the men had been employed in the swamp, *but I do* "*not recollect that I was acquainted with the particular* "*manner of their being employed.*"

Sir Thomas desired the Court to understand, that he was four days on his passage from the West Indies to Europe, at the date of Colonel Shipley's letter; which accounted for this witness not having corrected the er-

roneous opinion previously formed by him, upon idle or false reports, respecting the *nature* and *extent* of the work in the swamp.

Lieutenant GREENSHIELDS, a favourite witness of the prosecutor, deposed, that the soldiers were occasionally employed in cutting brush-wood, and other duties of fatigue, round their posts, and within the garrison, at Prince Rupert's.

Interrogated by the COURT:

"At the time the men were employed at work, did it "appear to you, that clearing the brush-wood in the "swamp was likely to benefit the service, by rendering "Prince Rupert's more healthy?"

Answer: "I naturally supposed, and it *was the opinion "of the faculty, that clearing the swamp would be of bene-"fit to the garrison.*"

Examined by Major GORDON:

"Had the men been at work in the swamp on the day "of the mutiny, and did you observe any thing particu-"lar in their going to work that day?

Answer: "They had been at work in the swamp. On "their going out, they seemed to be very *merry, jovial,* "and *noisy,* and had a man's handkerchief on a stick "carried before them."

This is the sum of the *prosecutor's proof* of his charge, that Colonel Johnstone directed the regiment to be employed in *cutting wood,* and clearing some swampy ground in the neighbourhood of Prince Rupert's, in the island of Dominica, *with the view to convert the same to his own use;* and neither paid the men, nor directed them to be paid for their labour, *to the great injury of the service,* as *thereby* discontent and mutiny were excited in the regiment.

COLONEL JOHNSTONE called JOHN BAPTISTE REMY, late serjeant in the 8th West-India regiment, and requested, that any questions, to which he might be considered as competent to answer, should be put to him

by the Court. Agreeably to this suggestion, the witness was examined accordingly.

Question by the COURT:

" Were you a serjeant in the 8th West-India regiment " at the time of the mutiny, and were you present at the " time?"

" *Yes,* I was present."

" Did you hear the mutineers give any reasons, or use " any expressions respecting the causes of it?"

" *The men said, they could not receive their pay; that* " *the Pay-master used to go to Roseau for money; but could* " *not get it.*"

" Did you hear any complaint among the mutineers " respecting work?"

" *No, I did not.*"

" Did you hear them call out, *Curry, curry?*"

" *I did not.*

" Were you ever on duty with the working party at " the swamp, and did the men complain?"

" *I have been on duty with the working party at the* " *swamp, but there was no complaint made by the men.*"

COLONEL THOMAS PICTON, of the 56th regiment, being sworn, was examined by Colonel Johnstone.

" Were you Governor at Trinidad?

" I was Brigadier General, commanding His Majesty's " troops, and was also civil Governor."

" Were you in the habit of employing the soldiers of " your garrison in duties of fatigue; and if so, what du- " ties?"

" Yes;—it was customary to employ them for an hour " or two in the morning and evening, in work respecting " the convenience and cleanliness of their post. There " was a hill in the rear of the barracks in the town, where " the troops were quartered, and the whole of the troops, " as well *white* as *black,* were employed, at times, in clear- " ing it of the wood for the health of the garrison."

Were the men employed *in filling up a swamp* in the town, and were the black regiments employed in any other

particular works of fatigue, in erecting fortifications and other works?

The filling up the swamp was done by the men of the 57th regiment. The interior of the hospital, which required a great deal of filling up, was done by the 9th West-India regiment; they were all performed as duties of fatigue.

What compensation was given to the men for the work, which they performed morning and evening?

I considered it as a duty of fatigue, and that they were *not entitled to any compensation;* but they received an additional *half allowance of rum* morning and evening.

Did you consider yourself authorised so to employ them, without the orders of the Commander in Chief?

Yes; I certainly did.

Major EDWARD DRAPER, of the 3d Regiment of Foot Guards, being sworn and examined by Colonel Johnstone.

Were you secretary to General Grinfield, the Commander in Chief in the West Indies in the year 1802?

Yes.

Were the men of Colonel Johnstone's regiment employed on duties of fatigue by General Grinfield, and upon what duties, and were they paid for their labour?

I remember that a detachment of the 8th West India was employed in labour at the King's House, Barbadoes, both for the cultivation of the garden, and in clearing the ground in front of that house; for which duties they received *no pay;* they were duties of fatigue.

Were they employed in carrying stones for building a wall round the Government House at Barbadoes?

They were, *without being paid.*

Lieutenant-Colonel FRANCIS MANNOOCH, inspecting field officer, being sworn, was examined by Colonel Johnstone.

Q. "Did you command the 68th regiment at Morne "Bruce, in the year 1801?"

"I did—the 2d battalion."

Q. "Were the men employed in cutting brush-wood

" round your post, and what compensation did they re-
" ceive for their labour?"

" I frequently employed the men of the 68th regi-
" ment in cutting brush-wood, between day-light and
" sun-rise; thinking it for the good of the men, for clear-
" ing the post; and I had Colonel Johnstone's directions
" to order an *extra* allowance of rum to be issued, when
" I thought they required it."

COLONEL JOHNSTONE desired further to call, as witnesses, Doctor BROWN, who, in his medical capacity, heard the death-bed confessions of the mortally wounded mutineers, ascribing the mutiny entirely to their having been deprived of their just rations of subsistence, and to their detestation of Major Gordon, as a supposed principal offender; also Brigadier-General BALFOUR, Lieutenant-Colonel the Honourable ROBERT HAMILTON, Lieutenant-Colonel BROWN, and other officers of experience in the West India service, all whose testimonies would have concurred in proving, beyond the possibility of doubt, the correct propriety, as well as the urgent expediency and public utility of the provident and benevolent measures taken by Colonel Johnstone to preserve the health and the lives of the troops under his command.

The COURT, however, appearing to consider such additional evidence as superfluous, Colonel Johnstone respectfully acquiesced.

He only desired to refer the Court to His Majesty's General Regulations and Orders, 1st November, 1804, commanded to be circulated, and strictly observed throughout the army, pages 67 and 68, particularly the two paragraphs following:

" Whenever His Majesty's service may require it,
" soldiers *are*, and *at all times have been*, liable to be or-
" dered by their superior officers, on working parties, as
" a duty.

" The levelling of ground in the vicinity of the camp
" or barracks, and making communications between dif-
" ferent parts of them, are duties of fatigue, and are to
" be performed *without any additional pay*."

The notice prefixed to these regulations, by command

of the Commander in Chief, bears :—" His Royal High-
" ness is aware, that this publication *does by no means*
" *comprehend the whole detail,* which the various duties in-
" cident to the service, and the interior economy and
" management of regiments, require; but the regulations
" herein contained, are such as apply under all circum-
" stances, and to all situations, and are to be considered
" as the *ground-work* of those instructions which Generals
" commanding districts, and *officers in the command of*
" *brigades and regiments, forts,* or *garrisons, may find it ne-*
" *cessary,* from time to time, to *issue to the troops under*
" *their respective commands.*"

FOURTH CHARGE.—The prosecutor called Major ROBERT LUCAS, 6th West India regiment, who deposed, that " *James Ryrie* was arrested by the order of " Colonel Johnstone, and confined a prisoner to the " guard-house; that he does not know particularly, but " supposes that Colonel Johnstone had authority, as Go-" vernor, in his civil capacity, to arrest and put a man in " the Fort as a prisoner."

The prosecutor offered no other evidence in support of the charge; and, on the suggestion of the Court, Colonel Johnstone declined adducing any in his defence against it.

Colonel Johnstone having finished his evidence, concluded his defence as follows :—

My Lord President, and Gentlemen of the Court,

I HAVE now concluded my defence against the several charges which have been preferred against me.

With respect to the *first* charge, I have appealed to no other evidence than that which my accuser himself has produced, except, that, in compliance with your Lordship's suggestion, I have supplied a small defect in that evidence, by proving the tradesman's bill for the price of

the scarlet cloth—there seems nothing farther necessary to render the proof of my defence on that head complete.

With respect to the 1st branch of the *second* charge, which includes the whole of the investigation into the accounts of the regiment, I have rested entirely upon my accuser's proof; the testimonies delivered by Mr Salton, and by Mr Kerr, confirmed by the accounts and vouchers produced by them, forming a chain of the most luminous and convincing evidence, of which perhaps any example is to be found in the records of judicial procedure.

As to the *second* branch of this charge;—I trust that the evidence given yesterday by four respectable officers, and by the master of the vessel who landed me on the 11th of April *to the south of Point Round*, at the distance of nearly five miles from the spot on which I am accused, at that very time, to have asserted a falsehood, unbecoming my rank, and the character of an officer, will, in the judgment of your Lordship, and of the Court, at once clear me from the foul aspersion, and satisfy your minds with regard to the lengths to which the prosecutor, where he may flatter himself with the hope of escaping detection, is capable of pushing his vindictive purpose.

I mentioned, that when this trial commenced, I was unable to conceive what my accuser meant by the accusation, stated as it was, in such a vague and mysterious manner, as if it were unfit to meet the light. When Major Gordon came to explain himself, in a sufficiently well framed circumstantial story, I could be at no loss as to his meaning, although I confess that his invention amazed me.

Fortunately, recollecting that Adjutant Nash had accompanied me with the detachment from Roseau, I instantly made inquiry at the public offices, whether that officer was yet alive, and where stationed. Understanding that he was somewhere in Ireland, I obtained a summons from the Judge Advocate-General, and dispatched it by express to the Adjutant-General at Dublin, who returned me a polite answer, saying, that he had forwarded my dispatch to Adjutant Nash, and that I might certainly expect him without delay. Accordingly that officer,

immediately on receiving the summons, set off, and did not sleep until he arrived here.

My Lord, when I sent for this officer to bear testimony merely to the simple matter of fact of his attending me on the occasion mentioned, I had not an idea that his evidence could go farther, than merely to wipe off the stain attempted to be fixed upon me. I little imagined or suspected, that the busy and relentless animosity of my accuser had been employed in diffusing calumnies against me through the sister kingdom, and in endeavouring to blacken and blast my name in the opinion of my old friend and brother officer. On his arrival he shewed me the letter, dated the 19th of October last, which he had received from Major Gordon, and a copy of the answer he had returned to it; both which I considered myself bound to produce, in justice to Adjutant Nash, whose conduct does honour to him, as well as to me.

With relation to the *Third* Charge, consisting of three several articles of accusation, the prosecutor left me little to supply, in addition to the evidence produced by himself, for my defence against the first of these articles. That no soldier of my regiment ever set foot on any lands of mine, as a labourer, or was employed for one moment, in any work for my private interest, emolument, or convenience, is a truth established to a degree of certainty, and with such clearness, as scarcely to admit of illustration.

The accusation relates exclusively to the detachment of recruits stationed at Roseau, under the command of Captain Stoddart. I can have no occasion to explain to the Judges who hear me, that of all persons imaginable, the person best qualified, from his immediate and constant opportunities of knowledge, to give information to the Court, in the manner in which that detachment was employed, was the officer himself, who had the command and sole charge of the detachment. Accordingly, my accuser, thinking, without doubt, as I do, summoned Captain Stoddart as a witness; but impressed, as I also can have no doubt, like myself, with a full conviction, that Captain Stoddart would and could speak out the truth, has very prudently declined to examine him.

To this witness, your Lordship will recollect that I yesterday put the following question in substance, if not in these precise words; "Did you ever see or hear of the "detachment of recruits, under your command, having "been employed, by my orders, in either hoeing or "planting canes, in the ground at the back of the Go-"vernment House?" To which he answered, "*He never* "*did.*"

I shall therefore dismiss this article, with no other reflection than what arises from my satisfaction in finding, that among the many injurious reports circulated to my prejudice, the article in question, which was of all, perhaps, the most easily swallowed, and most generally spread about, has been proved, as I trust, to the full conviction of my Judges, to have been a malicious invention.

The *Second* article of this charge has been shewn, in like manner, to have no foundation in truth. It is the singular lot of my accuser, indeed, for the most part, where he makes the strongest *assertions* to my prejudice, to produce the strongest *proofs* to my advantage. If I were of a vain-glorious disposition, I should have been gratified by laying before the Court the details of my conduct with respect to every circumstance, relating to the detachment mentioned in this article; and also with respect to the 68th regiment, then quartered at Morne Bruce. The specimens brought out in the depositions given yesterday, as immediately connected with the matter of the charge, were such as I have no cause to be ashamed of them: and I have no wish to misemploy your Lordship's time by the indulgence of my vanity.

The *last* article is two-fold, charging me as guilty of employing the regiment in clearing the swamp, and of being actuated by self-interested motives. Upon the last of these heads, I need say no more, than, that the whole of the evidence attempted to be produced in support of it, is a mere blank.

As to the first, the sum of the evidence in support of the prosecution stands, to the best of my judgment, nearly as follows: There are, in the *first* place, the innumerable extra-judicial reports and calumnies of my accuser. In the *next* place, there are the accounts given, with

great candour, by Lieutenant General Keppell, and other members of a Court of Inquiry, held at Martinique, of what some persons, produced there *by Major Gordon*, as witnesses, said on their examination; and, besides that these witnesses, selected by Major Gordon, were not upon oath, it does not appear from the accounts delivered at this bar, whether the little said by these witnesses was founded on their own knowledge of fact, or on hearsay, or was merely matter of supposition or opinion. In the *third* place, there is the *opinion* of Sir Thomas Trigge, confessedly founded upon *report* alone, and proceeding upon his own idea (formed and resting on that sole foundation) of the nature of the work, and tenor of the order issued by me, which has been proved incontestibly, to be altogether a mistake, on the part of that most respectable officer.

Such, my Lord, in my humble apprehension, is substantially the amount of the evidence in *support* of the article in question.

On the other hand, the proof of my defence will be found, *first* of all, in my letter to the late Mr Roberts, Ordnance Store-keeper for the island, with his answer to me, which, as Major Gordon has lost or destroyed my order to him enclosing that letter, and as Mr Roberts is since dead, is the best evidence possible to be produced of the fact.

In the *next* place, there is the letter of Colonel Shipley, chief Engineer of the West Indies, who was sent by the Commander in chief Sir Thomas Trigge, to inspect the state of the swamp, and who amply confirms my description of the work in which a few of the men had been employed, for a small part of two or three days, previous to the mutiny.

In the *third* place, there is the plain honest testimony of Serjeant Remy, examined yesterday, who was a witness examined upon oath on the trial of Serjeant Dodds, at Prince Ruperts; when Major Gordon acted in his usual capacity as prosecutor, and also as a witness. The deposition, taken by your Lordship, and other members of the Court from this witness, I find to coincide with the evidence on the trial of Serjeant Dodds, on your table, the amount whereof was, that the immediate cause of the men taking up arms, *was want of pay and nothing else.*

The testimony of this witness is corroborated by that of the *prosecutor's witness*, Lieutenant Greenshields; from both which it appears, that the men expressed no dissatisfaction or discontent, on account of their being employed in cutting the brush-wood in the swamp; but, on the contrary, as *my accuser's witness* more particularly deposes, the men employed in that work went to it readily, and even with a degree of *chearfulness and mirth*. These testimonies were not given as matters of *opinion*; they were not founded on extra-judicial reports, on popular rumour, or on idle hearsay. They were testimonies proceeding from the personal knowledge of the witnesses, drawn from the positive and certain information of their own eyes and ears.

Last of all, but surely not the least in importance, and still less the least remarkable, is the pleading, shall I call it? or the solemn judicial deposition of my accuser himself, delivered at the bar of the General Court Martial at Barbadoes, on the capital trial of Serjeant Portland, upon the evidence of which, (then, as well as *since*, averred by Major Gordon to be the truth, and nothing but the truth) that unfortunate culprit was sentenced to death; and his sentence, confirmed by Sir Thomas Trigge, was accordingly carried into execution.

I shall only remark in this place, that an objection was suggested to the proceedings of the Courts Martial on the trials of the mutineers, being received in the present trial.

I do not pretend to any knowledge of law; but, from the advice I have received, I cannot entertain a doubt, that the authenticated proceedings of the Courts Martial, are unexceptionable legal evidence, thus far—to ascertain *what any witness swore on those trials.*

I know, that if I desired to prove any *fact*, or circumstance, that was proved on any of those occasions, it is not sufficient *for that purpose*, to refer to the record of the evidence: I know that I must bring the witness into your Lordship's presence, and interrogate them upon their oaths with regard to the specific facts, or circumstances, to which they had formerly sworn.

Now, my Lord, I must entreat the attention of your Lordship and of the Court, to the object and purpose of

my reference to any of the trials alluded to. I do not refer to any testimony given on the trial of Serjeant Dodds, for instance, or any other trial now on your table, for the purpose of proving either the guilt or the innocence of that person; or the truth or falsehood of any one particular, mentioned in such testimony. All I contend for, and what no lawyer of character will dispute, is, that these records are perfectly good evidence, that the testimony of this or that witness, entered in the record, was really and truly delivered by him on the trial.

Your Lordship and the Court were pleased to allow Lieutenant General Keppell, and other members of a Court of Inquiry, to report what was there said by persons examined not upon oath. I thought it my duty, not on my own account, but to prevent a dangerous precedent, to enter my humble protest against that part of your proceedings. The grounds and reasons of my conduct are perfectly evident. The oath of General Keppell is sufficient evidence that the persons, examined in his presence, expressed themselves agreeably to his report. But these declarations, having been made in my absence, and not upon oath, never could have been received *as evidence against me;* and far less ought any *account* of those inadmissible declarations to have been listened to, or entered in the records of your proceedings.

I have too great confidence in the liberality and candour of the Court, to suppose for a moment that I can be misunderstood; I have stated fairly an argument in point of law, which I know no lawyer, who has a character to support, will venture to combat.

With respect to the trials on your table, what I affirm is this: that the official authentic record of the proceedings *is evidence,* at least, equal to the testimony of any man whatever, *of what any witness,* examined in any of these trials, *said.* And the difference is this; that from the oath of General Keppell, your Lordship has a *report,* more or less accurate, according to the strength and clearness of the memory of the witness, of what certain persons said *when not upon oath;* whereas, the trials prove what the witnesses there examined declared *upon their oaths;* and it merits particular notice, that your Lordship

there sees the depositions of the witnesses, literally as taken from their own mouths recently after the transactions sworn to; while, in the account given by General Keppell, your Lordship sees this farther disadvantage, that the witness can only speak from recollection of circumstances, which possibly did not make a very strong impression upon him at the time, after an interval of three years.

Having thought it just to the Court, as well as to the cause which I defend, to state these matters for your consideration, I have only to add, that if you will be pleased to compare the depositions given by Serjeant Remy, upon the examination of this Court*, with his own and the other testimonies in the trial of Serjeant Dodds, at Prince Rupert's, on the 17th of April, 1802, within a week after the mutiny, your Lordship will find a perfect concurrence of the evidence on this essential point, that the *want of pay* was the *sole* ground of complaint among the men, and that they took up arms on the evening of the 9th *on that account alone*; at the same time, that any murmur, discontent, or expression of dissatisfaction whatsoever, on account of *working on the swamp*, was never once heard.

Upon the fourth and last charge, I have nothing to offer in addition to what I stated on Wednesday; your Lordship and the Court having signified your opinion, that it was unnecessary for me to call evidence on that head.

If I have placed too much stress upon the evidence proceeding from my accuser's mouth, your Lordship and the Court will understand, that I have been induced the more to do so, that he may very fairly be considered on the present occasion as an *unwilling* witness in my behalf; for, confidently as, in the outset of this trial, he disclaimed all motives of personal animosity or resentment against

---

* Colonel Johnstone declined examining this witness himself; and only desired that the Court might put such questions to him, as they should judge proper.

me, I will yet venture to affirm, that few, if any, instances will be found in the annals of Courts Martial, of clearer and stronger proof of personal malignity and rancour, than the letters deliberately written by himself, and directed in a channel so fatal to my fortune and character, have amply displayed.

When, in the opening of my defence, I alluded to Major Gordon's letters, addressed to the department of the Commander in Chief; and, in particular, mentioned my accuser's application for pecuniary assistance from His Royal Highness, to maintain the prosecution against me, I declared the fact, that I was ignorant of the answer made by His Royal Highness to that application, but that, without doubt, the answer was such as, in all respects, became the character of that illustrious personage.

My Lord, I am unable to express the happiness I feel in now having it in my power, upon the highest authority, to take this public opportunity of acquainting the Court, that the conviction I then had, was perfectly well founded. I have now to inform your Lordship and the Court, that the application alluded to was rejected, with a degree of indignation, which the author of so unworthy a proposal was entitled to expect *.

Having acquitted myself of this duty, in justice to His Royal Highness, I have now to request your Lordship's permission, in justice to myself, to quote a paragraph of a letter, dated at Dominica, on the 11th June 1802, addressed by me to Sir Thomas Trigge; the original of which I intended to have read on Wednesday, but thought it unnecessary to press a matter, in itself not extremely mate-

---

* The authority alluded to was, that of a general officer, in a high situation, who told me he had his information directly from the Commander in Chief. I therefore considered myself as entitled to state that information as I had it, without regard to the signs of *dissent* given by Major Gordon at the time, or to the extra judicial reports, that the Major had declared his determination, in case of his being censured, or dismissed, *to let the cat out of the bag*.

rial, against the wish of my accuser, who, however, had little just reason for his opposition.

Previous to the date of this letter, I had acquainted Sir Thomas Trigge with the discovery I had made of certain mal-practices, in which Major Gordon was engaged for a considerable time; indeed, from the period of his assuming the command of my regiment till the unfortunate mutiny. And, in consequence of some correspondence between Sir Thomas and Lord Hobart, it had been suggested to me, on the part of Sir Thomas, to lay the result of my researches before his Lordship.

In answer to a letter from Sir Thomas upon the subject, I wrote in these words:

"Whatever representations may have been made to "Lord Hobart, upon the unfortunate business of the mu- "tiny of the 8th West India regiment, I shall certainly "decline adding to them. Your excellency will see how "uncandid it would be in me, either to prejudge a busi- "ness which a court martial has yet to decide upon, or to "bias the mind of his Lordship against an officer, who "will not possess the same means of defending himself. I "can have but one opinion upon the subject; but will rather "owe a coincidence of sentiment to the determination of "an unbiassed tribunal, than to my own ideas, however "well founded."

I have now to entreat the further indulgence of the Court, while I very shortly take notice, from its connection with the general topic to which I have now spoke, of a testimony borne in my favour, in a quarter from which your Lordship may have supposed, on hearing the opening of these charges, nothing had ever proceeded more flattering to me than the most marked disapprobation, or the bitterest invectives. I allude to two several addresses, one by the *Honourable Board of Council*, the other by the *Speaker and House of Assembly of Dominica*, made to me upon the occasion of my having communicated to them the intelligence of the preliminaries of peace having been signed by Great Britain and France, which were both published in the newspaper printed by Mr Lowndes, a person whom, Major Gordon says, he has summoned as a witness for him on the present trial.

The address of the Council says: "Whilst we regret

" the declining state of your Excellency's health, which " is soon to deprive us of the *pleasure and benefit* we might " have derived from the *continuance of your government and* " *society*, it affords us some consolation to reflect, that the " tranquil state which we anticipate this colony will enjoy " in the restoration of peace, may render your presence, " and the exertion of your excellency's talents, less neces- " sary among us than they would have been, while the " sword of war remained unsheathed." In conclusion, the address says: " On our part, we sincerely wish your Ex- " cellency a speedy re-establishment of health, and a long " enjoyment of all the blessings which this life affords.

(Signed) " GEORGE METCALFE,
" President of the Council."

The address of the Speaker and House of Assembly is not behind the other in its expressions of respect and affection for the person and character of their governor; and it is a circumstance somewhat amusing, that the gentleman who signs it as Speaker, is the very person, who was not ashamed to stand forward at another time, during my absence, as my libeller.—" It is with the most lively " regret," says the address, " we learn, that the govern- " ment of this colony is likely to be deprived of your Ex- " cellency's services, and the community of your society. " That regret is increased, when we reflect upon the cause. " Sharers in the anxieties to which the various exigencies " of our situation at times expose us, and sensible of the " alacrity and promptness with which your Excellency " made the requisite dispositions, we *the more feelingly la-* " *ment a separation*, at a time when we are likely to expe- " rience the more tranquil scene with which peace seems " teeming. It is, no doubt, *that promptness and alacrity* " which has averted some of those scenes of ravage and " disorder, which *less fortunate colonies* have experienced, " and which have been seconded with that zeal in the " other branches of the Legislature, which no motive of " private interest could influence or abate.

" Your Excellency will bear with you our most hearty " wishes, that your passage may be prosperous, and its ob- " ject salutary.—We beg leave to assure you, Sir, that,

" present, you will have our most cordial concurrence in
" every measure conducive to the prosperity of the colony,
" and, absent, *our sincerest wishes for your welfare.*
(Signed) " CHARLES WINSTON, Speaker."

I may observe, in explanation of an allusion in both these addresses, that, in consequence of the state of my health at that time, I had been advised to make a voyage to the continent of America, and reside there for some months, as a measure essential for the preservation of my life. But, upon the insurrection breaking out in Guadaloupe, I resolved to remain at my post, at all personal hazards; and, considering how intimately the peace of that island was connected with the safety of Dominica, I spared neither expence, nor exertion of any kind, in subduing that very formidable rebellion.

I have in my possession several letters written to me by different French generals, after that event, acknowledging their obligations; and, in particular, one from that gallant officer, the late General Richepance, in which he is pleased to ascribe to my co-operation, his success in restoring the tranquillity of that colony; and, in a very handsome manner, owns that, had it not been for the supplies of artillery and ammunition which I afforded, he would have been under the necessity of embarking the troops under his command for France, and abandoning Guadaloupe to its fate. I have scarcely occasion to add, that such an event would, in all probability, have been decisive of the fate of Dominica likewise, and, by the well-known dangerous contagion of example, have involved in its consequences the loss to this country of all its valuable possessions in the West Indies.

My Lord,—I think it unnecessary to detain you longer, interesting as the subject must in every view be to me, and deep as is my personal stake upon the issue.—I am sensible that it is upon the evidence which has been produced, and not upon any statement of mine, that the Court will pronounce the judgment which reason and justice shall dictate.

To that judgment, whatever it shall be, I will bow with reverence.

I know that I shall find, in the liberal sentiments of my judges, a willing pardon for the prepossessions natural for a person in my situation to entertain.

It is hard upon a man to be obliged to speak of his own actions, or of his own merit or character, in the service of his Sovereign.

The extreme virulence of the present attack is the sole apology I can pretend to offer for alluding to those topics. —Abundance of slander has been thrown out, not for this Court, but as a theme of general talk, and of popular calumny. When your Lordship looks at the situation where I stand, you will not impute to presumption, my saying, in this public manner, that from those shafts, though cruelly envenomed, I have felt no pain that I had not firmness to endure, in my retired enjoyment of an unreproaching conscience.

I have no desire to enter the lists with my accuser in a competition for the prize of invective or defamation.—He has made his attack upon me, under the specious form of legal military procedure.—And if I may be pardoned for the adoption of an ardent expression of conscious innocence, warranted by the evidence produced, I would venture to say, that my defence is " a strong camp, fortified " on every side by justice."

If this be no erroneous or deceitful prepossession in my own favour, I trust that this Honourable Court will feel a generous indignation in my behalf.

If an officer of the highest rank should be guilty of misconduct, the law is open for his punishment; and it is expedient and just, that it should be so.—But, a more serious evil, or one more deeply injurious to the service, cannot be imagined, than the frequency of trials by courts-martial. And, if encouragement should be given to frivolous and calumnious prosecutions, especially when carried on by inferior officers, from private pique, resentment, or revenge, against their superiors; the consequences infallibly would be, to degrade the military character in general, to weaken and unsettle those sentiments in a military corps, which are the best guarantees of their subordination, of their discipline, and respect for rank and

authority; and finally, to plant and cherish the fatal principles of turbulence, disorder, and mutiny itself.

My Lord, I have refrained from entering into such a summation of my evidence as the rules of your procedure permit; being perfectly aware, that had I done so, I should have exposed myself, in the opinion of my intelligent judges, to the imputation of not knowing where I ought to stop.—Although a stranger to the opinion which your Lordship, or any honourable member of the Court may have formed upon any of the points at issue, I well know, and cheerfully proclaim thus much, that a more patient, a more attentive, and a more candid hearing, was never granted to any prisoner.

Did I not know, from the evidence of my accuser's hand-writing, that his malignity towards me is of no common quality, I should have been at a loss to divine the object or purpose of his prosecution. For his attention to me out of doors, and the unceasing circulation of his calumnies, have been attended with consequences to me, which, I cannot help thinking, were sufficient to disarm the rage and hostility of an enemy not absolutely implacable.

The time was, when, by the favour of my Sovereign, I held the Government of Dominica, and the rank of Brigadier-General, with a regiment.

Your Lordship now sees me at your bar, stript of my honours, of my military rank and fortune.—Alas! My Lord, even this is an incomplete enumeration of my misfortunes.—The active industry of concealed calumniators (I say not who these are) has not been confined within the united kingdoms of Great Britain and Ireland. Reports not less groundless, and, if possible, yet more wicked than any that have come under the observation of this Court, accompanied with representations, in which unfortunately there was too much truth, of my having been deprived of my military rank, as a Major-General, and, on that account, exposed to the whole world, as an object of derision and contempt,—these representations, my Lord, found their way even to the farther shores of the Atlantic—there spread among my nearest domestic relations—produced the affliction of despair in that breast, where the

tenderest regard till then resided; and while I, absent—and under arrest, could administer no antidote to the poison, dissolved for ever those ties of affection, which were most closely entwined with my heart.

It is the sentence of this Court *alone*, that can in any degree restore me, and re-establish that peace of mind, which is the first of human blessings.—When this Court shall restore my sword, the chosen ornament of my early years, and the companion of two-thirds of my life—when this Court shall restore me to my former place in honourable society—when this Court shall restore me, tried and exalted by their seal of innocence, to the bosom of my family and my friends;—when this Court shall re-instate me in the good opinion of my king, in whose service I have bled, and for whose sake I shall ever hold my life a ready and a cheap sacrifice;—then,—my Lord,—and not till then, I shall feel, not merely an alleviation of my present misfortunes, but a measure of happiness sufficient to compensate for all my past sufferings.

From any judgment, different from what I have described, to be pronounced, in possibility, by your Lordship, and this honourable Court, I freely confess, that I desire to turn away my eyes.—The case is truly of that nature which admits of no middle course.

I resign into your hands my life, which, at present, to me is nothing,—and my fame, which to me is every thing,—humbly expressing the sentiment and wish of a soldier, with which my heart, at this moment, is swelled and animated,—*Aut cita mors—aut victoria læta.*

At the conclusion of this address (Friday, March 22d) the Court adjourned till Monday the 25th, when Major Gordon read a voluminous, elaborate, and abusive reply.

After he concluded, Colonel Johnstone begged leave to return his grateful thanks to the Court, for the patient hearing with which they had honoured him throughout the trial.

* * * * * * * * * * * * * * *

SENTENCE.

From the Rt. Hon. Sir Charles Morgan, Bart. Judge Advocate General,
To the Hon. Colonel Cochrane Johnstone.

Sir Charles Morgan presents his compliments to Colonel Cochrane Johnstone, and knowing that he is anxious to learn the result of the general Court Martial upon his trial, the proceedings whereof Sir Charles had the honour of laying before His Majesty yesterday, takes this early opportunity of sending him a copy of the letter which signifies the King's pleasure to His Royal Highness the Commander in Chief.

Downing-Street, 12th April, 1805.

(Copy Letter inclosed.)

Judge Advocate General's Office, 12th April, 1805.

SIR,

I have had the honour of laying before the King the proceedings of a General Court Martial held at the Royal Hospital at Chelsea, on the 1st, and continued by adjournments till the 25th of March last, for the trial of the Honourable Andrew Cochrane Johnstone, Colonel of the late 8th West India regiment, the several charges against whom (preferred by Major John Gordon, late of the same regiment), together with the opinion of the Court Martial upon each charge, are as follow:

CHARGES.

[These being inserted above, need not be repeated here.]

OPINION OF THE COURT MARTIAL.

"The Court Martial having weighed the whole of the "evidence adduced by the prosecutor Major Gordon, and "that brought forward by the Honourable Colonel An- "drew Cochrane Johnstone in his defence, is of opinion,

" that the L.500 bill, mentioned in the First Charge, was " not clandestinely obtained by Colonel Johnstone, and " that it doth not appear, that his Majesty's service, or " the good of the regiment was in any degree injured by " that transaction; and therefore the Court doth honour- " ably acquit him of the former part of the First " Charge.

" With regard to the second part of the First Charge; " viz. directing L. 140 to be stopped from the Paymaster, " out of the subsistence due to the regiment, the Court is " of opinion, that no blame whatever attaches to Colonel " Johnstone in this transaction, and they therefore also " honourably acquit him of the same.

" With regard to the first part of the Second Charge, " the Court is of opinion, that it hath not been proved, " and therefore acquits Colonel Johnstone of the same.

" And with regard to the second part of the Second " Charge; viz. the having asserted a falsehood unbecom- " ing his rank, and the character of an officer, the Court " doth most honourably acquit him.

" With respect to the first part of the Third Charge, " it appearing that the offence set forth therein, took " place (if at all) above three years prior to the date of " His Majesty's warrant for holding this Court Martial, " the Court is of opinion, it hath no power to take cogni- " zance of the same.

" With regard to the second part of the Third Charge, " the Court sees no reason whatever to believe, that Co- " lonel Johnstone had any intention to derive individual " benefit by the labour of the men from working in the " swamp, and they therefore acquit him of the charge; " although they cannot approve his having ordered the " work on the swamp, under all the circumstances of the " case.

" With respect to the Fourth Charge, the Court is of " opinion, that it is not substantiated, and therefore acquit " him accordingly."

And I am to acquaint Your Royal Highness, that His Majesty has APPROVED the decision of the Court Mar-

tial upon the several points brought under their consideration.

With respect to the circumstance of the Court having been inhibited from taking cognizance of one of the most material articles of charge, by reason that it appeared, upon explanation, that the supposed fact, which the prosecutor had in contemplation, and which he expected to have been able to establish by evidence, certainly did not take place within three years antecedent to the date of the warrant for this trial; His Majesty considers this lapse of time to have been owing to an improper conduct of the prosecutor, who, instead of making *general* accusations, highly reflecting upon the character of Colonel Cochrane Johnstone, might and ought to have set forth in substance the particular instances of crimination which he had in view.

In regard to another article of charge imputing to Colonel Cochrane Johnstone his having, in the months of March and April 1802 (a period within the cognizance of the Court Martial), employed soldiers of the 8th West India regiment in work towards clearing the swamp without paying them or directing them to be paid for their labour, His Majesty perceived with satisfaction, that the evidence has not furnished any reason to suppose, that he derived, or had in prospect, any individual advantage, as the prosecutor had by his charge suggested: His Majesty however expressed much disapprobation of the soldiers having been so employed and unpaid, more especially as Colonel Cochrane Johnstone acted therein upon his own sole authority, and without the assent or privity of General Sir Thomas Trigge, who commanded in chief, and whose sanction it was his duty to have obtained before any such measure was taken.

I have the honour to be, &c.
(Signed) CHAS. MORGAN.

Duke of York, Field Marshall,
Commander in Chief of His Majesty's Forces.

SEQUEL.

From the Hon. Colonel Cochrane Johnstone,
To Major General Calvert, Adjutant General.

Harley Street, April 19, 1805.

SIR,

On my return to town yesterday, from a visit to my nephew, Lord Cochrane, at Plymouth, I found a letter, addressed to me by Sir Charles Morgan, enclosing copy of a letter from him to his Royal Highness the Commander in Chief, containing the sentence of the General Court Martial on my trial.

In consequence of this letter, I considered it to be my duty, to lose no time in presenting myself to His Royal Highness, and to express my humble hopes, that there would now be no objection to my recovering the rank to which my seniority as Colonel entitles me.

Accordingly I went to the Horse Guards; but, after remaining there in attendance for some hours, it was signified to me by Colonel Gordon, that I could not then have access to the presence of His Royal Highness.

I therefore take this method of communicating to you the hopes which I meant respectfully to have expressed to the Commander in Chief yesterday, if I had obtained the audience I desired; and of requesting that you will make the same known to His Royal Highness; and that I respectfully wait his commands, relying, with perfect confidence, upon the gracious assurances made to me by the letter from his Royal Highness, dated the 10th of December, 1803.*

I have the honour to be. &c.

(Signed) A. C. JOHNSTONE.

---

* The passage of the Duke of York's letter to Colonel Johnstone, here referred to, is in these words:—"In regard to your promotion to "the rank of Major General, I must observe to you, that it is an inva- "riable rule of the service, not to include in any general Brevet promo- "tion, an officer (whatever may be his rank) against whom there exist "charges, the merit of which has not been decided. *Whenever an in-*

[Extract of a Letter.]

The Honourable Colonel Cochrane Johnstone,
To Major General Calvert, Adjutant General.

Harley Street, April 19, 1805.

SIR,

In compliance with your desire, I shall now explain the facts upon which my objection to the first remark, made in the name of His Majesty, upon the sentence of the General Court Martial on my trial, relative to the first part of the third charge, is founded; and which in the conference you honoured me with yesterday, appeared to make the same impression upon you, as upon myself.

The words of the sentence are, "It appearing that the "offence set forth therein, took place (if at all) above "three years prior to the date of His Majesty's warrant "for holding this Court Martial, the Court is of opinion "it has no power to take cognizance of the same."

The remark alluded to is thus expressed: "With re- "spect to the Court having been inhibited from taking "cognizance of one of the most material articles of "charge, by reason that it appeared upon explanation, "that the supposed fact, which the prosecutor had in "contemplation, and which he expected to have been "able to establish by evidence, certainly did not take "place within three years antecedent to the date of the "warrant for this trial: His Majesty considers this lapse "of time to have been owing to an improper conduct of "the prosecutor, who, instead of making *general* accusa- "tions highly reflecting upon the character of Colonel

---

"*vestigation shall have taken place; and, should the result prove fa-*
"*vourable to you,* there will not be any difficulty *in your recovering the*
"*rank to which your seniority, as Colonel, entitles you.*

"I am,
"Sir,
"Your's, &c.
(Signed) "FREDERIC,
Commander in Chief.

" Cochrane Johnstone, might and ought to have set forth " in substance, the particular instances of crimination, " which he had in view."

Now, Sir, I believe you will agree with me in thinking, that no person who reads this remark, can hesitate to conclude that the charge referred to was never investigated by the Court Martial; that the facts on which it is founded, could, at least in the persuasion of the prosecutor, have been established by evidence, and that I got rid of the article, carefully described to be *one of the most material*, merely upon a legal objection to its *competency*.

Had this been the case, I should have acquiesced in the justice of the remark, at the same time that I should have held my own conduct to be such as I ought to be ashamed of, and as utterly irreconcilable with my letter to you of the 22d June, 1804, in which I say, " You will lay " me under a particular obligation, by expressing to His " Royal Highness the Commander in Chief, my anxious " wish, and my most humble and earnest request, that no " part of the grounds on which Major Gordon has pro- " posed to found his charges against me, be permitted to " be kept back from examination."

The undeniable fact, however, is just the reverse of what every reader of the remark would be led to suppose. The Court heard Major Gordon open his prosecution in all its heads and articles; and they heard every witness examined, and saw every document produced by him, respecting this charge in particular, until his proof was finally closed, without the most distant hint or surmise, on my part, that the smallest objection existed to the competency of trying it.

At the same time, I certainly was all along perfectly aware of the objection, and I was further impressed with a sense of the duty I owed to the Court, to the Law, and to the British Army, in not permitting my judges, through want of information or attention to actual circumstances, to pronounce an *illegal sentence even in my favour*.

For, notwithstanding what seems to be insinuated in the remark, I venture to affirm, that there is not any one article of accusation, on which my accuser more completely failed in his proof, or where my defence, *on the merits of*

the case, was more fully demonstrated, than the very article in question.

In the course of my evidence, *the dates of facts*, no doubt, were ascertained; but *the facts themselves*, demonstrating the falsehood of the accusation, were no less clearly ascertained; and the import of the whole will be sufficiently understood from the following circumstance, for the truth of which I can appeal to every member of the Court, and to every individual of the audience: that upon my calling an additional witness to some others, a highly respectable member stated, "that any further evidence on my part "was unnecessary, as every member of the court was con- "vinced, that I had never worked a man of my regiment "upon any of my grounds, but had employed, for that "purpose, my own negroes alone."

After my proof was closed, when I came to sum up the evidence, I dwelt with particular emphasis, upon *the facts* which I had substantiated, in my defence against the article in question, and never once mentioned or alluded to the objection to the competency of deciding upon it.

In truth, I pressed upon the court my wish to wave the objection entirely in my individual case; and when in opening my defence, I felt myself compelled to mention the circumstance, I declared, with the same breath, that unless for the irresistible considerations before noticed, I should have passed it over in silence. I simply stated the matter of fact, without a word of argument, and concluded with again requesting not to be misunderstood, as meaning or desiring to plead *my own* defence.

With regard to the supposed circumstance, giving rise to this objection of incompetency, it is likewise impossible for me to assent to what is suggested in the remark.

Major Gordon's statement of fact, from which his charges were framed, was given in by him, previous to the 20th of June last, on which date a copy thereof was transmitted for my perusal*.

The statement of this charge contained in that paper,

* See Correspondence.

fixes the date of the facts charged "between the month of "*January* and *the end of July*, 1801.

During that and the preceding, as well as the subsequent month, I continued, with great earnestness, though with becoming deference, to make successive applications to the Commander in Chief to urge on my trial: And during the whole of that period, the facts, as stated by Major Gordon precisely, with their dates, were unquestionably triable by the military law.

When the above charge made its appearance, under authority of his Majesty's warrant, issued on the 10th of August, 1804, the period described, as above, to comprehend the space between January and the *end of July*, 1801, was now changed, for an obvious reason, to this description, "for some months *immediately preceding the month of Sep-* "*tember*, 1801."

Without making any comment on this, I have only to call to your attention that, as the King's warrant bears date the 10*th of August*, 1804, so, even according to this new edition of the charge, which applies to a period, "*preceding September*, 1801," every person who *read the charge*, and *knew the date of the warrant*, must have perceived, that it was totally prescribed, except with relation to the *three weeks* between the above two dates; and Major Gordon well knew, that the detachment had arrived at Prince Rupert's *in July*, 1801, where his own head-quarters were.

I cannot conclude this letter without adding an observation which struck me extremely on reading the remark.

I trust it is unnecessary for me to say, that I consider the remark as Sir Charles Morgan's, and by no means that of the sacred person in whose name it is made. And on this footing, I hope any apparent freedom of observation will not be considered as offensive.

Under this qualification, I must observe, that it struck me as not a little singular, that, while the charge in question appears to have been the subject of the Judge Advocate's particular consideration, he should have been silent with regard to by far the most important circumstance attending that part of the trial.

[The remainder of this letter relates to the egregious conduct of Major Gordon and Mr Seward, as appearing on the face of the proceedings, and permitted by the Judge Advocate General to pass unnoticed; at the same time, that *incorrect* views of things, comparatively trivial in themselves, even if true, to *Colonel Johnstone's prejudice*, seemed to be held up by that official person in the most conspicuous and glaring light.]

Lieutenant-Colonel Gordon,
To the Hon. Colonel Cochrane Johnstone.

Horse Guards, 18th April, 1805.

Lieutenant-Colonel Gordon presents his compliments to Colonel Cochrane Johnstone, and is directed by the Commander in Chief to acquaint him, that his Royal Highness will receive him at the Horse Guards on Saturday next, between three and four o'clock.

From the Hon. Colonel Cochrane Johnstone,
To General Calvert, Adjutant General.

Harley-street, 24th April, 1805.

SIR,

Permit me to call to your recollection my having on Saturday last, in your presence, tendered the resignation of my commission as Colonel to his Majesty, through his Royal Highness the Commander in Chief, and to request the favour, that you will have the goodness to inform me, whether his Majesty has signified his gracious acceptance of the same.

I have the honour to be, &c. &c.

A. COCHRANE JOHNSTONE.

From the Adjutant General,
To the Hon. Colonel Cochrane Johnstone.

Horse Guards, April 26th, 1805.

SIR,

I am honoured with your letter of the 24th instant, in reply to which, I have to state my perfect recollection of your having tendered to the Commander in Chief the resignation of your commission, and that you was informed by his Royal Highness at the time, that it would be necessary for you to express in writing your wish to resign, before he could receive his Majesty's pleasure upon the subject. This communication I am now commanded by his Royal Highness to repeat, in answer to the inquiry contained in your letter.

I have the honour to be, Sir,
Your very obedient humble servant,
(Signed) HARRY CALVERT,
Adjutant General.

The Right Hon. Sir Charles Morgan, Bart.
To the Hon. Colonel Cochrane Johnstone.

Downing-street, 26th April, 1805.

SIR,

Aware of your anxious and natural wish to receive early information of the result of the proceedings of the Court Martial upon your trial, I did not hesitate, on the same day on which the original was penned, to send to your house in town the substance (I believe, a copy) of the letter, which notified to the Commander in Chief the sentence, and his Majesty's pleasure respecting the same. I think it proper now to intimate to you, that *I have since seen occasion to recal that letter, and to substitute another in lieu thereof:* in which last-mentioned letter (the only difference which I know between the two) the whole paragraph which contains the remark upon the article of charge, whereof the Court did not think itself authorised to take cognizance, is omitted. *I have taken upon myself*

to explain to his Majesty, and I have confidence in being able to explain satisfactorily, the occasion of this remark being now omitted.

I have the honour to be,
Sir,
Your very obedient
and most humble servant,
CHARLES MORGAN.

The Hon. Colonel Cochrane Johnstone,
To His Royal Highness the Commander in Chief.

Harley-street, 27th April, 1805.

SIR,

I had the honour of waiting on your Royal Highness, by appointment, last Saturday, in order to express my humble hopes that, in consequence of my honourable acquittal, there would not now be any difficulty in my recovering the rank of Major-General, agreeably to the gracious communication made to me by the letter of your Royal Highness, dated 10th of December, 1803.

Your Royal Highness was pleased to inform me, however, that the Judge Advocate General had acquainted you, that his Majesty had expressed to him his Royal determination not to give me my rank of Major General.

Upon this, I humbly requested that your Royal Highness would be graciously pleased to lay my commission as Colonel, with all due respect, at his Majesty's feet.

On Wednesday last I addressed a letter to the Adjutant General, requesting to know whether his Majesty had been graciously pleased to accept of my resignation; in answer to which, I am honoured with a letter of yesterday's date, communicating the commands of your Royal Highness, that it is necessary for me to express in writing my wish to resign, before you can receive his Majesty's pleasure upon the subject.

In obedience to your commands, I therefore now make my humble request, that your Royal Highness will be graciously pleased to signify to his Majesty my wish to resign my commission as Colonel, which, I trust your Royal High-

ness will agree with me in opinion, I cannot possibly continue to hold, either with credit to myself, or with advantage to the service, after his Majesty's determination to refuse me my rank of Major General, communicated to your Royal Highness through the Judge Advocate General.

I have the honour to be,
With sentiments of the utmost respect,
SIR,
&c. &c. &c.
(Signed) A. C. JOHNSTONE.

From Major General Calvert, Adjutant-General,
To the Hon. Colonel Cochrane Johnstone.

Horse Guards, 26th April, 1805.

SIR,

I am directed by his Royal Highness the Commander in Chief to communicate to you the adjudication of the General Court Martial lately held for your trial, with his Majesty's sentiments thereupon, which I cannot better convey, than by furnishing you with a copy of the letter addressed to the Commander in Chief by the Judge Advocate General upon the subject; and I am at the same time commanded by his Royal Highness to inform you, that you are released from arrest.

I have the honour to be,
SIR,
Your most obedient Servant,
(Signed) HARRY CALVERT,
Adjutant-General.

Sir Charles Morgan's letter, inclosed in the above, bears the same date with his former letter, 12*th April,* 1805; and differs from it in no other respect, than by omitting the *first* of the two remarks subjoined to the sentence, and adding the following paragraph at the end of the *last:*

" Your Royal Highness will be pleased to give direc-
" tions for Colonel Cochrane Johnstone being forthwith
" released from his arrest, and cause it to be notified in
" Orders, that the Court Martial is dissolved."

From the Hon. A. Cochrane Johnstone,
To Major-General Calvert, Adjutant-General.

67, *Harley-street, 28th April,* 1805.

SIR,

I had the honour of receiving late last night your letter enclosing copy of one from the Judge Advocate General, reciting the sentence of my Court Martial, and omitting the *first* of the two remarks upon which I humbly took the liberty of animadverting in my letter to you of the 19th instant.

At the same time, I observe that the other remark, stated by the Judge Advocate General in the name of his Majesty, remains; and, of course, I must conclude that it will be published in general orders.

Without troubling you with any detailed representation of my humble ideas upon this subject, I shall at present only beg leave to appeal to your equity and candour, how far I had just reason to expect, that a circumstance *not so much as hinted in any charge on which I was tried,* against which I consequently had no notice or opportunity to prepare for my defence, (and which, therefore, even if relevant as a separate charge, could not, consistently with justice, be at all taken into consideration in my trial,) should have been made by the Judge Advocate a ground for censuring my conduct; more especially, when my honourable judges themselves, after a trial of such length, and of so much solemnity, did not feel themselves called upon to inflict such censure.

I cannot help observing farther, that circumstances of the utmost importance to his Majesty's service;—circumstances involving, eventually, the fate of every officer in the army, appearing upon the face of the proceedings, particularly in the testimonies of my accuser, and in some testimonies brought forward by him, are still passed over in silence.

I trust I have no occasion to apprehend, that I can be misunderstood by you with regard to any observation I have made upon the remarks alluded to, which I consider as solely the operation of the Judge Advocate General, or his deputy. And if I ever had entertained a doubt as to

this, it would have been completely removed by the Judge Advocate General's letter to me of the 26th instant, in which, after taking notice of the *first* remark above mentioned, he says, " *I* have since seen occasion to recal that " letter, and to substitute another in lieu thereof."

I have the honour to be, &c.

A. COCHRANE JOHNSTONE.

From the Right Hon. Sir Charles Morgan, Bart.
To the Hon. Colonel Cochrane Johnstone.

Downing-street, 29th April, 1805.

SIR,

Mr Oldham again urges me (and unless he was conscious to himself of an improper conduct, I do not wonder at it) to obtain from you an explanation of the cause which induced you to remonstrate against his officiating in the regular course of his duty at your trial. His not having been examined as a witness, although he had been summoned at your instance, is not that which makes an impression upon his mind; but that he should appear to have been objected to, as an unfit person to act as Judge Advocate; it is certainly natural for him to feel, and to say the truth, Government may expect from me, that I should be able to assign a sufficient cause for the extra expence incurred by my employing another person in Mr Oldham's stead.

I have the honour to be,

SIR,

Your most obedient

And most humble Servant,

CHARLES MORGAN.

From the Hon. Colonel Cochrane Johnstone,
To the Right Hon. Sir Charles Morgan, Bart.

Harley-street, 30th April, 1805.

SIR,

I had the honour of receiving your letter of yesterday's date, as I was sitting down to dinner with some company, and would have answered it immediately, had not that circumstance prevented me.

You will do me the justice to recollect, that the objection I stated to you against Mr Oldham's officiating as Judge Advocate on my trial, was grounded upon this, that I considered him to be a necessary witness for my defence, and in consequence of being cited to appear in that character, he would stand in a situation which appeared to me incompatible with that of the official conductor of the prosecution.

Upon this ground, and upon this ground alone, I certainly understood that you acted in substituting Mr Daniel in the room of Mr Oldham. It is true, that I mentioned to you that I could assign, if necessary, other reasons for delining that gentleman; but as you did not require them, and waved my proposal to answer any question you might desire to put on that subject in your own presence, I was unwilling that any thing of the kind should be farther insisted upon, having had no view whatever in making the assertion, beyond that of discharging a duty of justice which I owed to myself.

As to the circumstance of my not having examined Mr Oldham, I can assure you, Sir, that this happened contrary to my expectation, and that there was not a witness cited by me, whom I was more seriously determined to call to the bar of the Court, than Mr Oldham.—But, in consequence of my defence having otherways been so clearly and completely established to the apparent satisfaction of the Court, I, merely to avoid giving unnecessary trouble, dropt my intention of examining that witness, and a considerable number besides; particularly two highly respectable gentlemen, whom I had summoned in order to be examined on the same points with Mr Oldham.

I should flatter myself, that the explanation now given will be satisfactory;—at any rate you will be sensible, from what I am now going to mention, that it would be unnecessary to go farther into the subject at present.

In consequence of some unlooked for and singular incidents that have occurred since the conclusion of my trial, I have felt myself imperiously called upon to lay my case before the Public; and my defence, with some details and observations, including the different grounds of my objection to Mr Oldham's officiating on my trial, is at present in the press.

Since I am on this subject, I think it but fair to acquaint you likewise, that some of my observations will relate generally to your department, and to the administration of military law in which you are concerned.

It is certainly an extraordinary event, that an officer's rank should have been withheld from him until the issue of his trial, upon an explicit declaration by the Commander in Chief, that, should the result of such trial be favourable, there would be no difficulty in his recovering his rank; and yet, that this very officer, after having been HONOURABLY ACQUITTED by one of the most respectable Courts Martial that ever was assembled in this or any country, should, in consequence of a *remark* subjoined to his sentence by *the Judge Advocate General*, have been refused his rank, and thereby, in effect, forced to resign his commission in the army.—In this very predicament, however, do I now stand; of which I presume you are fully apprised.

I have the honour to be, &c.

(Signed) A. C. JOHNSTONE.

From the Hon. A Cochrane Johnstone,
To His Royal Highness the Duke of York.

Harley-Street, 67, 12th May, 1805.

SIR,

I had the honour of addressing a letter to Your Royal Highness a fortnight ago, humbly requesting that you would be pleased, for the reasons therein stated, to lay my commission, as Colonel, at His Majesty's feet.

I trust Your Royal Highness will have the goodness to pardon me for making the present application to know, whether His Majesty has been graciously pleased to accept of my resignation.

The reflections of your own mind will readily suggest to Your Royal Highness the reasons of my anxiety to receive your answer on this subject. In the state of suspense where I at present remain, it is impossible for me to form any plan for my future life; at the same time that the peculiar situation of my affairs, and the derangement which they have suffered by circumstances of which Your Royal Highness has had occasion repeatedly to be apprised, during these last two years, render it of the utmost importance to me, in the event of my quitting the army, to make the strongest immediate exertions for retrieving my injured interests, and endeavouring to save the remains of a fortune, which the vindictive attacks of injustice and malice had so cruelly conspired to ruin.

I have the honour to be, with sentiments of the utmost respect,

Sir,

&c.

(Signed) A. COCHRANE JOHNSTONE.

From His Royal Highness the Commander in Chief, To the Hon. A. Cochrane Johnstone.

Horse Guards, 16th May, 1805.

SIR,

I have to acknowledge the receipt of your two letters of the 27th April and 12th instant; the former requesting that I would lay your commission as Colonel at His Majesty's feet; and the latter requesting to know whether His Majesty has been graciously pleased to accept of your resignation.

I have to acquaint you, in reply to your first letter, that you seem to have misapprehended me, in conveying to you the decided determination of His Majesty relative to your rank of Major-General, as the communication I made to you, in the presence of the Adjutant-General, implied

solely, that I had understood from the Judge Advocate General, that such was His Majesty's inclination.

I must, however, observe, that in consequence of the public letter of the Judge Advocate General, transmitting to me the decision of the General Court Martial (on which letter alone I must form my opinion on the whole matter of your case), and in which the Judge Advocate General conveys to me His Majesty's approbation of such decision, together with the remark which His Majesty was pleased to express upon your conduct, I cannot conceive, that so long as the strong displeasure of His Majesty remains upon the public records of the army, that I should be warranted to take upon myself to recommend to His Majesty, that an officer, labouring under such high censure, should be promoted in His Majesty's service.

I have therefore, in conformity to your request, laid the resignation of your commission as Colonel at His Majesty's feet, and am commanded to acquaint you, that His Majesty has been graciously pleased to accept the same.

I am, Sir,

Your's,

(Signed) FREDERICK,

Commander in Chief.

HOUSE OF COMMONS,

28TH JUNE, 1805.

THIS day the Right Honourable General Fitzpatrick, one of His Majesty's most honourable Privy Council, addressed the Speaker as follows:

"I rise, Sir, to mention a subject, on which it "is my intention hereafter to submit a motion to "the House; and I wish to take the present op- "portunity of doing so, because it relates to that "military administration which is to form part of "the business of this day's discussion. The pre- "sent advanced state of the Sessions will prevent "my being able to bring forward any motion, "though I wish it much. It is, however, a sub- "ject of such extreme importance, that it is neces- "sary for me to take some notice of it. The "House may be assured I shall state it in form "on a future occasion, and as early as possible.

"The subject consists of a very gross and "alarming evil;—one which, I apprehend, has "but lately crept into the administration of the "Military Law of this country. I trust, the "practice to which I allude is an innovation of "not many years standing. I am informed it is. "It respects the execution of the duties of the

" office of Judge Advocate General of the army.
" I find, that under the present practice, there is
" in the office of Judge Advocate, the assumption
" of a power which I conceive is not consistent
" with that office, and not warranted by the laws
" and constitution of this country.

" Every gentleman who hears me, knows how
" great the extent of the Royal Prerogative is with
" respect to the Military Government. Every one
" knows the power of His Majesty to dismiss,
" without a Court Martial, any person who bears
" a commission in the army.

" I should be the last man to call in question
" the Royal Prerogative; but I am sure no man
" will contradict me when I say, that a Prerogative
" of such extent ought to be exercised *under the*
" *advice of responsible Ministers.* The law of
" this country enables His Majesty to appoint
" Courts Martial for Military offences. The law
" places in His Majesty the right of confirming
" or remitting their sentences, but I do not be-
" lieve that the law or the constitution of this
" country could ever intend that the officer of the
" Crown, in the exercise of such a Prerogative,
" should be the Judge Advocate of the army. I
" believe he is at present the sole adviser of the
" Crown. I believe that this practice has pre-
" vailed only during a part of the time the Right
" Hon. Baronet* has been in possession of it.

" Formerly the transmission of sentences of
" Courts Martial was through the office of the Se-
" cretary at War. The Secretary at War of course

* Sir Charles Morgan.

" became responsible for the advice he gave.
" With respect to his decision, I am not sure that
" I think that was sufficiently solemn for a de-
" cision of so important a point. *I cannot con-*
" *ceive why the lives, fortunes, and characters of*
" *His Majesty's Military officers, should not be*
" *entitled to as solemn a consideration as those of*
" *every other subject in the country.*

" Every one knows that those important con-
" cerns, as they affect other classes of His Majes-
" ty's subjects, are decided by His Majesty in
" Council. I think the same solemnity ought to
" be observed with regard to the Sentences of
" Courts Martial; but that will be a question for
" future consideration. That this practice does
" prevail, and has been attended with great hard-
" ship to individuals, I shall be enabled to shew
" in a case that has lately occurred, *and has spread*
" *the greatest alarm throughout the whole army.*
" I allude to the case of COLONEL COCHRANE
" JOHNSTONE, a gentleman, who, *after a Trial by*
" *a Court Martial, and an honourable acquittal,*
" *has, at the instance of the Judge Advocate, been*
" *exposed to the penalties and punishment attend-*
" *ant upon guilt.*

" This is what I shall submit to Parliament.—
" I am aware that an appeal from the Sentence of
" any Court Martial to this House is a delicate
" question; but in the present case the appeal is
" in favour of the Court Martial, and seeks redress
" against the effects of *undue influence.* I beg
" pardon for dwelling so long on the subject. I
" have risen to give this notice, and I shall bring
" forward the motion early next Sessions. It will
" consist of two branches; one will be a com-

" plaint against the exercise of the office; the other " will refer to the means of defining the power " of the officer, and will suggest some provisions " as to the manner of his conducting himself in " future.

HOUSE OF LORDS,

5TH JULY, 1805.

THIS day the Right Hon. the Earl of Suffolk, General in His Majesty's army, and Colonel of the 70th regiment, addressed the House as follows:

" My Lords, I cannot allow the present Session " of Parliament to close without calling the at- " tention of this House to a subject immediately " connected with the honour of the profession to " which I belong, and which, from its great im- " portance, has of late engaged much of the pub- " lic attention.

" I allude to the recent case of THE HON. MR " COCHRANE JOHNSTONE, who, according to the " information I have received, was on a *mere ru- " mour of intended accusation*, passed over in a " General Brevet Promotion, when, as a Colonel " in the army, he was entitled to the rank of Ma-

" jor-General; and who having since been brought
" to trial on Charges by an inferior officer, and
" honourably acquitted by a General Court Mar-
" tial, has been driven to the necessity, in conse-
" quence of *his rank being still withheld*, of quit-
" ting the army.

" If my information thus far is correct, I believe
" every noble Lord who hears me, will be of opini-
" on, that the respectable officer, to whom I have
" alluded, has suffered injustice, and that the interest
" of His Majesty's service concurs with the claims
" of the party injured, in demanding redress. I have
" further to state to your Lordships, that I under-
" stand the act of apparent injustice complained
" of, was one of an *assumed* power by the Judge
" Advocate General, which the constitution of
" England does not recognize, and which is sanc-
" tioned by no precedent or practice unless of a
" very recent date. Your Lordships know that
" His Majesty is invested with competent authori-
" ty to dismiss any officer from his service, with-
" out a Court Martial; and, I should be the last
" man in his dominions to question the legality of
" such exercise of the Royal Prerogative. But
" your Lordships also well know, that in no case
" is it understood that this right of the Crown
" can be exerted wantonly, capriciously, or op-
" pressively; and, therefore, where any instance
" of this nature occurs, substantial justice requires
" that there should be an accredited adviser of the
" Crown responsible for the consequences. But
" the constitution knows no such adviser of the
" Crown, as the Judge Advocate, upon whom
" such responsibility attaches. And, I believe,
" it will be found that till within a very short

" time past, the sentences of Courts Martial were
" communicated to His Majesty, exclusively, by
" the Secretary at War, who is a responsible of-
" ficer. I refrain from going more at length into
" the circumstances of the case. I have mention-
" ed my chief source of information at present,
" being public report alone. But, I can state
" precisely to your Lordships what came under
" my personal observation, at a General Court
" Martial, where I was a material evidence. I
" mean the case of Major-General Burton, the
" circumstances of which were extremely remark-
" able. The prominent features were these :—On
" the first day of the trial, after examining what-
" ever evidence the Prosecutor could produce, the
" accusation was perceived not to be substantia-
" ted. The proof in support of the prosecution
" was closed. And had the Court then proceed-
" ed to give their decision, the prisoner must have
" been acquitted. I am safe in venturing to add,
" that the wishes of the Honourable Members were,
" that such had been the event.

" On the day following, *by the advice of the*
" *Judge Advocate, fresh evidence was produced,*
" consisting of a letter *written by General Burton*
" *to the* COMMANDER IN CHIEF, in extenuation
" of his conduct, and containing a fair and man-
" ly acknowledgment of the charge. With re-
" spect to such *a mode of obtaining evidence,* such
" *an application of a private letter,* I shall make
" no observation. I have simply mentioned the
" fact upon the ground of the charge being pro-
" ved by the letter under the prisoner's own hand;
" the Court Martial pronounced their sentence,
" adjudging General Burton to be cashiered. But,

" in consequence of the many illustrious and ho-
" nourable testimonies borne to General Burton's
" highly meritorious military conduct, and to the
" esteemed worth and amiable virtues of his pri-
" vate character through life, the Court Martial
" transmitted so strong a recommendation to the
" clemency of that character, whose benignity
" even outshines the splendour of his rank, that
" though the Sentence of the Court was approved
" of as conformable to law, General Burton was
" immediately reinstated in his rank in the army,
" as well as in the command he held previous to
" his trial.

" My Lords, I have thought it proper to state
" generally, this singular case, which occurred only
" a short time prior to that of COLONEL COCH-
" RANE JOHNSTONE, which has been distinguished
" by the still more alarming circumstances in the
" conduct of the Judge Advocate, that now in-
" duces me to address your Lordships with rela-
" tion to what I must consider as a great consti-
" tutional question.

" This last case, from all I have heard, demon-
" strates of what vast importance it is to the State,
" that the powers of Courts Martial, as well as the
" authority and duties of every officer concerned in
" their proceedings, should be clearly marked and
" defined. The importance of the subject indeed
" is such, that I trust His Majesty's Ministers
" will consider it as meriting their most serious
" attention, and their consideration of the best
" means of applying an effectual remedy to the
" abuse which appears to have crept of late years
" into the Judge Advocate's department. Should
" they not be inclined to bring forward the busi-

" ness, I certainly shall, and at an early period of " the ensuing Session of Parliament. The object " of the motion which, in that case, I shall have " the honour of submitting to this House, will be " two-fold :—1st, To vindicate the rights of par- " ties, tried by Courts Martial, more particularly " the just and undoubted claim of right vested in " Colonel Johnstone, by virtue of the decision of " his Court Martial, under the existing military " laws;—2dly, To define the constitutional es- " tablishment of Courts Martial, and to regulate " and ascertain the legal effect of their decisions " in future."

THE END.

Edinburgh:
Printed by James Ballantyne & Co.

BRITISH MUSEUM